United States Court of Appeals for the Second Circuit

APPENDIX

ORIGINAL

77-6190 & 77-6195

United States Court of Appeals

For the Second Circuit.

IN THE MATTER
OF
The Complaint of TUG OCEAN PRINCE, INC., and RED STAR TOWING & TRANSPORTATION CO., as Owner and Charterer of the Tug "Ocean Prince" for Exoneration from or Limitation of Liability,
Plaintiffs and Third Party Plaintiffs-Appellees and Cross-Appellants,
v.
UNITED STATES OF AMERICA,
Third Party Defendant-Appellee.

UNITED STATES OF AMERICA,
Plaintiff-Appellant,
against
PITTSTON MARINE TRANSPORT CORP.,
Defendant-Appellee,
TUG OCEAN PRINCE, INC., and RED STAR TOWING & TRANSPORTATION CO.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES COURT OF APPEALS
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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -

IN THE MATTER

of

The Complaint of TUG OCEAN PRINCE, INC., and RED STAR TOWING & TRANSPORTATION CO., as Owner and Charterer of the Tug "Ocean Prince" for Exoneration from or Limitation of Liability,

Plaintiffs and Third-Party Plaintiffs-Appellees and Cross-Appellants,

v.

UNITED STATES OF AMERICA,

Third-Party Defendant-Appellee.

- -X

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

-against-

PITTSTON MARINE TRANSPORT CORP.,

Defendant-Appellee,

TUG OCEAN PRINCE, INC., and RED STAR TOWING & TRANSPORTATION CO.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

- -X

DOCKET ENTRIES (74-3358).

Date	Proceedings
1974	
Aug. 2	Filed Complaint and issued summons.
Aug. 2	Filed Order approving Pltffs' Stipulation for value directing issuance of Notice and Restraining suits
Aug. 2	Filed Stipulation for Value
Aug. 2	Filed Affidavit of Value
Aug. 2	Filed Stipulation for Pltff's costs sum of $250.00 - National Surety Corp.
Aug. 5	Issued notice of complaint for exoneration from or limitation of liability that claims must be filed by 9/3/74. Clerk.
Sep. 3	Filed consent order that the time of USA to answer the complaint is ext. to Oct. 3, 1974. Weinfeld, J.
Sep. 3	Filed pltfs. notice of complaint for exoneration from or limitation of liability. Clerk.
Aug. 30	Filed claim of Pittston Marine Transport Corp.
Aug. 30	Filed claimant Pittston Marine Transport Corp. ANSWER to complaint
Aug. 30	Filed deft. Tug Ocean Prince and Red Star Towing Co. affdt. of service of Dorothy Donnelly.
Sep. 26	Filed consent order--ORDERED that any action arising out of this incident which the USA may commence against pltfs. Tug Ocean Prince and Red Star Towing and Transportation Co. is not subject to the injunction contained in the restraining order filed in this limitation proceeding and it is ORDERED that the USA is not entitled to file a claim in any way to share in any limitation fund for any recovery awarded in any action commenced under the aforementioned Water Pollution Prevention and Control Act.

DOCKET ENTRIES (74-3358)

Date	Proceedings
1974	
Sep. 25	Filed deft. Tug Ocean Prince, Tug Ocean Prince, Inc. and Red Star notice to claimants pursuant to supplemental rule F(6)
Nov. 28	PRE-TRIAL CONFERENCE HELD BY MAG. GOETTEL
1975	
2-7	Filed deft Notice of takeing deposition of plt.s Red Star Towing & Transportation Co. and Tug Ocean Prince, Inc., on 2-3-75.
4-21	PRE-TRIAL CONFERENCE HELD BY MAG. GOETTEL
5-22	PRE-TRIAL CONFERENCE HELD BY MAG. GOETTEL
9-4	Filed Consent Order of Mag: Goettel that leave is given to pltfs. Tug Ocean et al to make the U.S.A. a 3pty. deft and that the Clerk issue a summons under the seal of this Court, and that summons and 3pty. complaint to be served.
9-5	Filed pltfs. 3pty pltfs. third-party Complaint - summons iss.
9-9	Filed affdvt. of service by Anita Tumlin of the third-party complaint upon McHugh, Heckman, Smith & Leonard, 80 Pine St. NYC 10005 on 9-5-75.
9-16	Filed summons with marshals return served--United States Attorney Dept. of Justice Wash, D.C. on 9-10-75 #162713
9-16	Filed pltfs request for production of documents pursuant to rule 34 (First Set)
10-23	PRE-TRIAL CONFERENCE HELD BY MAG. GOETTEL
10-28	Filed pltfs and 3ptv pltfs request for production of documents and for inspection and copying.
11-3	Filed 3rd-pty deft. notice of examination of 3rd-pty pltf. on 11-13-75.
11-5	Filed ANSWER of 3rd-pty deft

DOCKET ENTRIES (74-3358)

Date	Proceedings
1975	
11-19	PRE-TRIAL CONFERENCE HELD BY MAG. GOETTEL
11-25	Filed pltf's notice to take deposition of 3rd pty deft. on Dec. 19, 1975 at 2:00 p.m.
12-4	Filed pltfs and 3rd-pty pltf. affdvt. and notice of motion for an order dismissing the counterclaim asserted by 3rd-pty deft. ret. 12-16-75
12-15	Filed 3rd-pty deft. affdvt. and notice of cross motion for consolidation ret. 12-23-75
12-15	Filed deft. Claimant Pittston Marine Transport Corp. cross-claim
12-16	Filed stip. and order adj. ret. of pltfs and 3rd-pty pltfs motion to 12-23-75 -- Weinfeld, J.
1976	
1-9	Filed ANSWER of 3rd-pty deft
3-9	Filed pltfs second request for production of documents and Things for Inspection and copying
5-6	Filed notice of reassignment to Judge Goettel
4-29	Filed deft. Pittston Marine Transport Corp. interrog.
5-24	Filed transcript of record of proceedings dated 12-23-75
8-20	Filed pltf. answers to interrog of deft. Pittston Marine Transport Corp.
1977	
2-4	PRE-TRIAL CONFERENCE HELD BY MAG. BERNIKON
2-22	Filed pltfs notice of taking deposition of Pittston Marine Transport Corp. on 2-14-77 and deft. is required to produce certain documents

DOCKET ENTRIES (74-3358)

Date	Proceedings
1977	
4-21	Filed ORDER that this proceeding is consolidated with 75 CIV 5801 for pre-trial--Goettel, J. m/n
5-3	Non-Jury trial begun before Judge Goettel
5-4	Trial Continued
5-5	Trial Continued
5-6	Trial Continued
5-9	Trial Continued and adj. to 5-11-77
5-11	Trial Continued
5-12	Trial Continued and concluded decision reserved
7-6	Filed Transcript of record of proceedings dated 5-6-77
7-11	Filed Transcript of record of proceedings dated 5-3-77
9-12	Filed OPINION #46322 Tug Ocean Prince, Inc., as owner, and Red Star Towing & Transportation Co. seek exoneration from liability. The Government seeks costs of the oil pollution cleanup from the other parties and a civil penalty from Pittston. The case should be remanded to the Coast Guard to set a fine consistent with the degree of culpability attributable to the barge owner. Ordered that pltfs are entitled to limit their liability to the value of the Tug Ocean Prince and the amount of her pending freight immediately after the grounding, for which amount Pittston is entitled judgment with costs Pittston, not responsible for the oil spill Gov't cause of action against it for cleanup costs is dismissed with costs. The Claims of ptlfs and Pittston against the US (in 74 Civ 3358) and Pittston's counterclaim (in 75 Civ 5801) are dismissed with costs Pltfs are liable to the US for cleanup costs not to exceed $19,800--Goettel, J. m/n

DOCKET ENTRIES (74-3358)

Date	Proceedings
1977	
10-6	Filed Post Trial Memo submitted on behalf of Tug Ocean Prince & Red Star Towing & Trans. Co.
10-6	Filed Post Trial Memo of the U.S. with respect to the issues stated by the Court.
10-6	Filed PreTrial Brief of U.S.
10-6	Filed Trial Brief of Pittston Marine Trans. Corp. & Barge New London.
10-6	Filed Trial Brief submitted on behalf of Tug Ocean Prince, and Red Star Towing & Transportation.
11-9	Filed deft Pittston Marine Transport Corp. notice of appeal to the USCA for the Second Circuit from the part of the Opinion and order, dated 9-6-77 entitling pltfs to limit its liability to the value of the Tug Ocean Prince and the amount of her pending freight, mailed copy to Healy & Baillie and Gilbert S. Fleischer
11-18	Filed USA 3rd-pty deft. and pltf. notice of cross-appeal to the USCA for the Second Circuit order of 9-6-77. mailed copy to Healy & Baillie and McHugh, Heckman, Smith & Leonard and Thomas J. Cahill
12-14	Filed ORDER that this action is transferred to the suspense docket of the Court--Goettel, J. m/n
1978	
2-3	Filed Transcript of Record of Proceedings dated May 3, 4, 5, 6, 1977
2-3	Filed Transcript of Record of Proceedings dated May 9, 11, 12, 1977
2-3	Filed Supplemental notice of record on appeal has been certified and transmitted to the USCA for the second circuit on 2-3-78

DOCKET ENTRIES (75-5801).

Date	Proceedings
1975	
11-18	Filed Complaint and issued summons.
11-28	Filed summons and return-served the following: Red Star Towing & Transportation Co. by J. Jones on 11-21-75 Tug Ocean Prince, Inc. by J. Jones on 11-21-75 Pittston Marine Transport Corp. by John F. Clancy on 11-21-75
12-15	Filed Consent Order extending the time of defts. Red Star Towing & Transportation Co. and Tug Ocean Prince, Inc. to answer to the complaint from 12-11-75 to 01-05-76. CANNELLA, J.
12-15	Filed ANSWER of deft. PITTSTON MARINE TRANSPORT CORP. to the complaint (MHS&L)
1976	
1-6	Filed ANSWER of defts. Red Star Towing & Transportation Co. and Tug Ocean Prince, Inc. to the complaint.
3-9	Filed defts. Red Star Towing & Transportation Co. and Tug Ocean Prince, Inc. second request for production of documents.
1977	
4-21	Filed notice of reassignment to Judge Goettel
4-15	Filed ANSWER to counterclaim of deft. Pittston Marine Transport Corp.
4-21	Filed ORDER consolidating 74 Civ 3358 with this case for pre-trial -- Goettel, J. m/n (filed in 74 Civ 3358)
6-6	Filed Transcript of record of proceedings, dated 6-6-77 (placed in 74 CIV 3358) 1st supplm record
7-11	Filed Transcript of record of proceedings, dated 5-3-77

DOCKET ENTRIES (75-5801)

Date	Proceedings
1977	
9-12	Filed OPINION # 46322. Tug Ocean Prince, Inc., as owner and Red Star Towing & Transportation Co. seek exoneration from liability. The Government seeks costs of the oil pullotion cleanup from the other parties and a civil penalty from Pittston. The case should be remanded to the Coast Guard to set a fine consistent with the degree of culpability attributable to the barge owner. Ordered that pltfs are entitled to limit their liability to the value of the Tug Ocean Prince and the amount of her pending freight immediately Pittston, not responsible for the oil spill Gov't cause of action against it for cleanup costs is dismissed with costs., The claims of pltfs and Pittston against the US in (74 Civ 3358) and Pittston's counterclaim (in 75 Civ 5801) are dismissed with costs. Pltfs are liable to the US for cleanup costs not to exceed $19,800 --Goettel, J. m/n
10-6	Filed PreTrial Brief of U.S.A. (Filed in 74 Civ. 3358.)
11-9	Filed deft. Pittston Marine Transport Corp. notice of appeal to the USCA for the Second Circuit from the part of the Opinion and Order, dated 9-6-77 entitling pltfs to limit its liability to the value of the Tug Ocean pltfs to limit its liability to the Tug Ocean Prince and the amount of her pending freight. mailed copy to Healy & Baillie and Gilbert S. Fleischer.
11-18	Filed pltfs and 3rd-pty pltf, Tug Ocean Prince, Inc. and Red Star Towing & Transportation Co. notice of appeal to the USCA for the Second Circuit from that part of Opinion and Order entered 9-12-77 dismissing their claims against third-party deft. USA. mailed copy to McHugh, Heckman, Smith & Leonard and Robert B. Fiske, Jr.
12-14	Filed ORDER that this action is transferred to the suspense docket of the Court subject to reinstatement on the calendar--Goettel, J. m/n

OPINION AND ORDER OF JUDGE GOETTEL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter
of the
Complaint of Tug Ocean Prince, Inc.
and Red Star Towing & Transportation
Company, as Owner and Charterer of the
Tug "OCEAN PRINCE", for Exoneration
from or Limitation of Liability,

Plaintiffs and
Third-Party Plaintiffs,

-against-

United States of America,

Third-Party Defendant.

74 Civ. 3358 (GLG)

United States of America,

Plaintiff,

-against-

Pittston Marine Transport Corporation,
Red Star Towing & Transportation
Company, Tug Ocean Prince, Inc.,

-and-

Tug "OCEAN PRINCE" and Barge
"NEW LONDON", in rem,

Defendants.

75 Civ. 5801 (GLG)

OPINION

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OPINION AND ORDER OF JUDGE GOETTEL

FINDINGS OF FACT

1. At all material times Tug Ocean Prince, Inc. was, and still is, a New York corporation and the owner of the Tug OCEAN PRINCE. Red Star Towing & Transportation Company (hereinafter collectively referred to with Tug Ocean Prince, Inc. as "Plaintiffs") was, and still is, a West Virginia corporation with an office and principal place of business in New York, and at all material times was the charterer of the Tug OCEAN PRINCE, and manned, victualed, supplied and operated said Vessel.

2. The Tug OCEAN PRINCE is a United States documented, steel hulled, diesel driven, single screw, 1,800 horsepower tugboat built in 1958, having an overall length of 94.7 feet, an extreme breadth of 27.1 feet and a deep draft of about 13 to 14 feet. Her registered gross tonnage is 198 tons and her registered net tonnage is 134 tons.

She was at all material times equipped with direct pilothouse engine controls, a gyro compass, a magnetic compass, a Decca radar and a searchlight. Her chart for the area was a 1969 edition. Although a subsequent edition was available, there were no material differences between the charts in the location and characteristics of the relevant aids. Buoy "21" had been renumbered to Buoy "25".

3. Red Star had no written procedure for supplying its tugs with navigational information or material. The ordering of charts was left to the captain without the office having a system to check what charts and other navigational publications were needed. Red Star had no procedure for checking that this material was obtained by the Captains. On the voyage in question, the OCEAN PRINCE was carrying current editions of the Light List and Coast Pilot.

4. Red Star Towing & Transportation Company (hereinafter singly referred to as "Red Star") is engaged in the business of general towage in the coastal and inland waters of the United States, including New York Harbor and its tributaries.

5. Red Star Marine Services, Inc. is a company which at all material times provided "management services" for Red Star, including "operations" such as booking of work, scheduling and dispatching of tugs to accomplish that work, hiring and firing of personnel, and overseeing the total operation of the Red Star fleet which includes the Tug OCEAN PRINCE.

6. Red Star and Red Star Marine Services, Inc. are related companies, and have the same president, Mr. Robert W. Sanders.

7. Walter Kristiansen at all material times was vice-

president of operations of Red Star Marine Services, Inc.

8. The Red Star companies are also related to the Bushey shipyard at Brooklyn, New York and the various Bushey companies in the New York Harbor area.

9. Red Star has offices at 500 Fifth Avenue, New York, New York, where its tug dispatchers are located.

10. The dispatchers of another related company, at all material times, were located in the same offices, and used the same radios and frequencies.

11. Captains, Relief Captains, Mates and other crew members serving on Red Star tugs are hired by Red Star Marine Services, Inc. but are paid by Red Star.

12. Red Star Marine Services, Inc. had internal requirements for the hiring of navigators, which included a requirement that Tug Captains and Mates it employed either have or obtain a Coast Guard license for the operation of Red Star tugs as a condition to their employment, which company policy preceded subsequent Coast Guard licensing requirements. In addition, when one of the navigators was unfamiliar with the area the tug was dispatched to, Red Star's policy was that the other navigator have extensive experience in

and be familiar with the area, and that this man be available to assist the other navigator whenever necessary or if requested by the man on watch.

13. Pittston Marine Transport Corporation (hereinafter "Pittston") is a New York corporation and, at all material times, was engaged in the business of transporting petroleum cargoes by barge in, among other places, New York Harbor and its tributaries. At all material times Pittston owned, operated, manned, victualed and supplied the tank barge NEW LONDON, of 1,665 gross and net tons and having overall dimensions of 295 feet in length and 43 feet in breadth. The Barge is equipped with a pushing well or notch at its stern into which the bow of a pushing tug fits, providing motive power and steering control.

14. The United States of America (hereinafter the "Government") is a sovereign which, under the auspices of the Coast Guard, establishes, maintains and operates an aids to navigation system on the entire length of the Hudson River in the State of New York. It does so under statutory authority to serve, inter alia, the needs of the commerce of the United States. (14 U.S.C. §81).

15. On February 2 and 3, 1974, the Tug OCEAN PRINCE carried a full crew of six men including two United States Coast Guard licensed (for uninspected towing vessels not more than 200 miles off-shore) navigators, John Kiernan and Walter Reimer, two deckhands,

an engineer and a cook.

16. At all relevant times, Mate Reimer held a valid license issued by the United States Coast Guard which gave him authority to serve as operator of uninspected towing vessels upon the inland waters of the United States, including the Hudson River. Reimer had been a Tug Captain for five years, and was qualified generally to serve as a Tug Captain, although he had never before navigated the Hudson River. He had served as a deckhand on tankers on the Hudson River briefly some six years earlier. He worked for Red Star in the capacity of Captain, Relief Captain and Mate, principally on board the OCEAN PRINCE, for a period of one and one-half (1 1/2) years before the voyage in question.

17. Kiernan was also licensed by the Coast Guard and had extensive experience as a Tugboat Captain on the Hudson River which spanned over a period of more than 30 years. He was employed by an associated company as a Tug Captain, but was temporarily assigned to Red Star to fill a vacancy on the Tug OCEAN PRINCE and went on board on February 1, 1974.

18. During the voyage in question, Kiernan and Reimer stood alternating six hour watches, with Kiernan standing the 6:00 to 12:00 watches in the morning and evening and Reimer standing the 12:00 to 6:00 watches. One deckhand

was assigned to each watch. The Captain or Mate of the watch did the steering and navigating. The deckhand performed various chores, such as line handling, general maintenance on board the tug, and, if requested by the Captain or Mate, lookout duties, steering under the Captain's or Mate's supervision, and getting coffee, which was well known to Red Star's vice-president of operations.

19. Prior to the voyage in question, the tug OCEAN PRINCE had operated in southern waters, in Georgia, Florida, Texas and Louisiana for over a year. During December of 1973 and January of 1974, it operated in and about New York but Reimer was on vacation at that time. He rejoined the Tug in New York on February 2, 1974 at the Bushey shipyard in Brooklyn. Kiernan was already on board. Kiernan had never met Reimer before February 2, 1974, but knew that he was regularly assigned to the OCEAN PRINCE. He was not advised and was unaware of Reimer's lack of familiarity with the Hudson River.

20. While the plaintiffs knew that Reimer lacked familiarity with the Hudson when he rejoined the OCEAN PRINCE on February 2, it was assumed that this lack of experience would be discussed between Reimer and Kiernan when they met on the vessel.

21. Red Star's Personnel Department was responsible for designating the Captain of the Vessel. Red Star intended Kiernan would be Captain. Kiernan indicated doubt in his own mind that he was Captain, but he took certain steps which were appropriately done by the Captain. It is the Captain's duty to know the experience and qualifications of the Mate.

22. On Friday, February 1, 1974, Pittston phoned in an order to Red Star, advising that it would need a tug to tow its Barge NEW LONDON to Kingston, New York sometime during the weekend. The order was entered on a job order card, which was given to the tug dispatcher's office. In response to Pittston's order, the dispatcher, Philip Keenan, decided to assign the Tug OCEAN PRINCE to do the job, and did so at 1800 hours on February 2nd. Keenan did not discuss with Kiernan or Reimer who was to be Captain and who the Mate.

23. Keenan was aware of the make-up of the pilothouse crew on the OCEAN PRINCE on February 2nd, and had been told by the day dispatcher, Robert Fitch, that Kiernan was Captain and Reimer was Mate. Keenan was ware of Reimer's lack of experience as a navigator on the Hudson. e decided, however, that the OCEAN PRINCE would be suitable for the oyage since Kiernan, who had extensive experience as a tug navigator n the Hudson River, was on board and would be available to assist eimer if necessary. He also assumed Reimer's lack of experience on

the Hudson River would be discussed between Kiernan and Reimer. The dispatcher's decision to assign the OCEAN PRINCE to the NEW LONDON job was in accordance with accepted practice in the tugboat industry of dispatching a tug to an area one of the navigators had not navigated before so long as the other navigator on board has experience in the area.

24. From the Bushey shipyard the OCEAN PRINCE, with Kiernan on watch, proceeded to Esso dock in Bayonne, New Jersey, and made up to the loaded Barge NEW LONDON. Reimer, who was off-watch, nevertheless assisted the deckhands in making up the tow, and then went below when the Tug and Barge left on the voyage to Kingston, New York.

25. The NEW LONDON was taken in tow forward of the OCEAN PRINCE in push-tow fashion with the bow of the Tug snuggly secured in the Barge's stern notch with steel cables and several parts of synthetic lines. The overall length of both Vessels was about 385 feet, with steering and propulsion being supplied by the Tug. Both Vessels had a combined gross tonnage of 1,863. The Barge had a draft of about 12 feet. In its loaded condition, the Barge had only two feet freeboard and the view ahead from the Tug's pilothouse was unobstructed.

26. John Kiernan was in charge of the navigation during the

first leg of the voyage which commenced at 1915 hours. At 2330 hours, Mate Walter Reimer came to the pilothouse of the Tug and relieved Captain Kiernan of the watch. Kiernan remained with Reimer for about 15 minutes, and then retired without any discussion of navigation on the river. The Tug and her Tow were approaching Haverstraw, New York at the time. The Tug, with Reimer now in charge of navigation, continued the trip northbound past Peekskill, New York and through Bear Mountain Bridge. At about this time, Reimer sent his deckhand to the galley to get coffee, leaving Reimer alone in the wheelhouse.

Reimer did not ask Kiernan to stand the watch with him, although Kiernan would have if asked. This is customary practice aboard towboats. At all relevant times the tide was ebbing, there was ice in the river, and visibility was two miles with snow flurries. The Tug was making good a speed of about 6 knots over the bottom (the Vessels were proceeding against the current). At this time the Tug's radar was operating and in use. A navigation chart for the area was open and was also in use. Reimer was able to see both shorelines of the river to port and starboard and was also able to see over the full length of the Barge and a safe distance ahead. He was using his radar from time to time to confirm his visual sightings and to locate aids to navigation and other points of reference ahead. At all times the Tug's radar, steering system and engine controls were operating properly.

27. Reimer had not attended any navigation school and never had any formal training in the use of the radar, but was familiar with its operation.

28. The river north of the Bear Mountain Bridge is bounded on both sides by mountains. There was ice flowing on the river with heavy accumulations along parts of the shorelines.

Dead ahead of the Bear Mountain Bridge, west of the navigable channel, approximately one and three-quarter miles north of the Bridge is an obstruction consisting of a pinnacle rock or rocky area, the apex of which is 7 feet below the mean low water line and not visible to vessels in navigation. It is located east of a wide shoal area along the west shore which also is not visible from the surface. The rock obstruction and shoal area west of it projects almost 400 yards into the river from its westerly shore.

About 600-800 yards north of the rock is lighted beacon #27 located on the easterly shore of Con Hook Island. The light is 46 feet above the water according to the Light List and is visible to a tug from the town of Manitou about 1.3 miles south.

The River is 800 yards wide off Mystery Point, and narrows to 450 yards off Con Hook Island. The channel east of the rock described above, which is located between Mystery Point and Con Hook Island, is about 500 yards wide. The river depth in this area varies between 35 feet and 127 feet.

29. The rock presents a dangerous hazard and obstruction to navigators in the Hudson River, apparent on the chart and well known to mariners familiar with the waters and to the Coast Guard.

30. The obstruction is marked by the "25" lighted buoy, which was established and is maintained and operated by the Coast Guard for the purpose of marking the rocky obstruction near the channel. The buoy also marks the westerly extreme of the navigable channel and a bend in the river. The "25" light buoy is replaced by the Coast Guard annually in December at the commencement of the ice season by an unlighted, second class black can buoy. The can buoy was in use on February 3, 1974. This change is noted in the Light List.

31. Reimer knew of the existence of the buoy on the chart and the obstruction it designated.

32. As the Tug and her Tow passed abeam Mystery Point, Reimer did not locate the "25" can buoy either visually or on the radar. Because the said buoy marks a dangerous obstruction as well

as a bend in the channel, Reimer reduced engine speed, turned on the Tug's powerful spotlight to illuminate the area ahead, and continued to search for the buoy visually and by radar.

33. Shortly afterwards, at about 0130 on February 3, 1974, the Barge struck the rock on its port bow resulting in damage to the Barge's forepeak and #1 and 2 port side cargo compartments. After impact, Reimer sighted the buoy to the starboard partially visible in the ice near the Vessels' wake. He assumed that the Barge and the Tug in making the turn to starboard after the incident had freed the buoy from the ice.

34. The buoy was obscured by ice and was not seen by Reimer as the Tug and Tow approached it. The ice flow and ice accumulation along the shorelines including north of Mystery Point on the easterly shore partially obscured the image of the shoreline both to the eye and on radar.

35. Immediately after the casualty Kiernan was summoned and returned to the pilothouse. He saw the lighted tower of Con Hook Island ahead and the "25" black can buoy about 50-75 feet off the starboard beam of the Tug. The Vessels were still on a northerly heading at the time. After turning around, the lights on the Bear Mountain Bridge about 2 miles south of the Tug's position were also visible. Kiernan brought the Tug and Barge to the Day Line Pier south of the casualty site where they remained until the NEW LONDON was partially lightened into another barge later in the day.

36. The grounding of the Barge NEW LONDON resulted, in part, from Reimer's lack of knowledge of local landmarks and experience on the Hudson River.

37. Reimer did not examine the Light List or the Coast Pilot very carefully because he was unfamiliar with the warning therein not to rely solely on buoys and the warning that ice covers the buoys in this area during the winter.

38. Reimer failed to post a lookout when conditions were such that same was required.

39. A navigator who is about to enter strange waters should familiarize himself with the applicable charts, the Light List and the Coast Pilot.

40. The Light List contains a number of warnings to the navigator including the following:

> "It is imprudent for a navigator to rely on floating aids to navigation to always maintain their charted postion and to constantly and unerringly display their advertised characteristics. The obstacles to perfect performance are of such magnitude that complete reliability is manifestly impossible to achieve. Buoys are liable to be carried away, shifted, capsized, or sunk as the result of storms, ice conditions, collisions, or other accidents.
>
> ***
>
> "All buoys should, therefore, be regarded as warnings or guides and not as infallible navigation marks; especially those located in exposed positions. Whenever possible, a ship should be navigated by bearings or angles on fixed objects on shore and by soundings rather than by reliance on buoys."

41. The Light List also states that the lighted buoy "25" (Aid, No. 1874) is "replaced by an unlighted can from Dec. 15 to April 1". It also shows that the fixed light No. 27 on Con Hook Island is on a black skeleton tower, the top of which is 46 feet above water.

42. With respect to the ice on the Hudson, the Coast Pilot states:

> "The ice season usually starts in early January and ends in mid-March. Normally shipping is affected most seriously in the Hudson River between Tappan Zee and Albany. In addition to the problem of getting through the ice, aids to navigation are covered or dragged off station by moving ice. Buoys are removed from the Hudson River during the ice season then reset in late March when the ice clears. However, the river is well marked by lights along the shore." (p. 235).

43. The rock obstruction marked by the "25" can buoy is located in an area which is susceptible to ice accumulation on the ebb tide because an "eddy" is created south of Con Hook Island which results in ice build-up. On the ebb tide, ice accumulation north of Mystery Point on the east shore, directly across the channel from the rock, also occurs. These conditions are known to the Coast Guard and, on occasion, result in the obscuring of the buoy on the west and a distortion of the shoreline on the east.

44. With respect to Con Hook Island, the Coast Pilot makes the following observation:

> "A rock, with a depth of 7 feet over it and marked by a lighted buoy, is about 0.3 mile southward of Con Hook. When descending the river, particularly with a fair current, there is a tendency to set toward the rock; caution is advised."

45. At no time prior to the grounding did Mate Reimer see the flashing light on Con Hook Island, north of the can buoy "25".

46. The proximate and predominate causes of the grounding were errors in navigation. These errors in turn were the result of an error in management, whereby a navigator inexperienced with the waters was given no assistance from an experienced navigator then on board in traversing a portion of the river that was dangerous under the circumstances then existing.

47. With proper use of radar, Reimer could have gotten a radar range from the Bear Mountain Bridge with reasonable accuracy. With a radar range off Bear Mountain Bridge and a visual bearing on Con Hook Light it would have been possible to construct a danger bearing to keep the Vessel off the rock. However, since the Tug, as most tugs, was not equipped with a gyro repeater or a pelorus it was difficult to take accurate visual bearings.

48. The obscuring of the buoy by ice contributed to the grounding in that if the buoy had been visible it would have indicated to Reimer he was off course and to the west of the channel.

49. The casualty involving the NEW LONDON was the third grounding at the same location involving similar circumstances during the prior 20 years. One year before the grounding of the NEW LONDON, on February 26, 1973, the loaded gasoline Barge GEORGE T. TILTON, while being push-towed by the Tug BART TURECAMO, struck the rock marked by the "25" black can buoy, causing damage to the Barge

and pollution. Coast Guard records show the buoy was reported to be under the ice at the time of the grounding.

50. In January, 1969, the Coast Guard Cutter SASSAFRASS went aground on the same rock due to a navigational error with the buoy in plain view.

51. In December, 1963, the Coast Guard Cutter SAUK went aground at the same location. In this case, it was reported to the Coast Guard that the can buoy in question was under the ice. In investigating the incident, the Coast Guard learned that several other casualties at the same rock preceded the SAUK grounding, although those incidents occurred in the 1920's and 1930's and the conditions existing therein were not developed.

52. Similarly, in January, 1976, the Barge ROBERT L. POLING, while in tow of the Tug JOAN MORAN went aground on the same rock. Coast Guard records show that the buoy was reported to be almost completely submerged under the ice at the time of the grounding.

53. During the following winter a major oil spill occurred at the same location, but the facts of that incident were not developed at trial.

54. The can buoy is the best practical floating aid for

the site available under present technology. A fixed tower on the rock, the base of which would be in 7 feet of water, would be damaged or destroyed by ice.

55. In light of the difficulty in keeping this floating aid to navigation visible during the winter season, there were available other navigational aids which could have been established on land which would better aid the mariner in staying in the channel.

56. The Coast Guard has not established any ranges or lights on the eastern shore in the immediate area approaching can buoy "25".

57. The Government publication of Waterborne Commerce of the United States shows the following with respect to the number of trips passing the Con Hook area:

Vessels and tug and barge flotillas travelling between Upper Bay, New York Harbor and Waterford, New York

	Up Bound	Down Bound
1971	70,586	73,081
1972	57,779	59,378
1973	61,741	62,468
1974	55,578	55,306
Total 4 years	245,684	250,233

Of these, 118,435 were up bound tug and barge flotillas and 166,133 were down bound tug and barge flotillas with drafts of 18 feet or less.

58. As a result of the NEW LONDON striking the rock, oil leaked from the Barge into the river. Notice of violation was given to Pittston on August 27, 1974; written response was submitted by Pittston and a hearing was held on September 26th; thereafter a civil penalty of $5,000.00 was assessed and notice of Pittston's right to appeal the penalty was given to Pittston. Pittston appealed the assessed penalty. The Commandant of the Coast Guard denied the appeal.

OPINION

To summarize the major events giving rise to this litigation, on February 3, 1973, the barge New London, loaded with oil and in the tow of the Tug Ocean Prince, ran aground on a submerged rock formation in the Hudson River. The buoy, placed by the Coast Guard to mark the obstruction, was apparently obscured by ice. The impact caused the New London to leak oil, fouling the river. The Government undertook the cleanup operation. This sequence of events raises some difficult questions of maritime liability and novel issues of interpretation of the Water Quality Improvement Act of 1970.*

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* 33 U.S.C.A. § 1151 _et seq_., (Supp. 1977). It is conceded that all claims fall within the admiralty jurisdiction of this court, Fed. R. Civ. Proc. 9(h) and arise under 33 U.S.C.A. § 1321 (Supp. 1977) and 46 U.S.C. § 742 (1970).

OPINION AND ORDER OF JUDGE GOETTEL

Tug Ocean Prince, Inc., as owner, and Red Star Towing & Transportation Company, as charterer of the Tug Ocean Prince, seek exoneration from liability on the ground that the accident was caused by the Government's failure to maintain adequate aids to navigation. (They are referred to hereafter simply as "Plaintiffs"). Alternatively, they seek to have their liability limited to the value of the tug, claiming that the grounding resulted from a cause outside their privity and knowledge. Claimant Pittston seeks to recover the value of all the oil lost from its barge either from the plaintiffs or from the Government. The Government seeks the substantial costs of the oil pollution cleanup from the other parties and a civil penalty from Pittston. Pittston, in turn, seeks indemnity from the plaintiffs for any liability it may have to the Government because of the oil spill.

The trial was bifurcated and issues concerning damages reserved for later consideration. The liability issues will be considered separately.

Plaintiffs' Claim for Exoneration or Limitation of Liability

The grounding of the barge New London was caused by a grave error in navigation by the Mate, Reimer. Unfamiliar with the locale, deceived by ice build-up along the shore, he allowed the tow to stray to the west of the channel while he concentrated on attempting to locate a buoy which had apparently become obscured by drifting ice floes. His concentration on locating the buoy was ill advised in light of the fact, clearly set forth in the Coast Pilot, that buoys in this area (the Hudson River between Tappan Zee and Albany) get covered and moved off station at that time of year by moving ice. Even without the warning in the Coast Pilot, a mariner familiar with the river would not have relied on the buoy at this time of year under the existing conditions

While the plaintiffs contend that the inability to locate the buoy was the proximate cause of the grounding, it is clear that the errors of navigation were the proximate cause. The obscured buoy was merely a "but for" factor which, had it been visible, might have corrected the navigational errors. It cannot be said, therefore, that inability to use the aid to navigation was the proximate cause of the incident. American Smelting & Refining Co. v. S.S. Irish Spruce, 548 F.2d 56 (2d Cir. 1977). Because the accident was not inevitable, but was instead due to negligence, plaintiffs are not entitled to exoneration from liability. The Grace Girdler, 74 U.S. 196 (1868); The Jumna, 149 F.171 (2d Cir. 1906). Whether the plaintiffs are entitled to indemnity from the Government under the Suits in Admiralty Act, 46 U.S.C. §§ 741-752, because of its failure to provide a more reliable aid to navigation, will be considered subsequently.

OPINION AND ORDER OF JUDGE GOETTEL

Having concluded that plaintiffs are not entitled to exoneration from liability, we turn to the related question of whether plaintiffs are nevertheless entitled to limit their liability pursuant to the Limitation of Liability Act, 46 U.S.C. § 183 et seq.

The operation of tug boats differs in several material respects from that of ocean going vessels. Because tugs are kept in operation so steadily and the watchstanders work such long hours (twelve a day) it is necessary to have two complete sets of crews, changing every two weeks, as well as alternates for vacation periods. The crew ordinarily includes two watchstanders, a Captain and a Mate, who alternate six hour watches. While on watch they usually not only command and navigate the tug but also serve as helmsman "steering" the vessel. Necessarily this limits the amount of instrument navigation and plotting of position possible. For this reason such tugs are not usually equipped with gyro repeaters or peloruses for taking positions. Navigation is done by sight of eye, piloting from known landmarks and aids to navigation. Consequently, intimate familiarity with the waters and hazards is far more important than in ocean navigation. An unfamiliar helmsman requires assistance from an experienced one. It is the responsibility of the Captain to see that the inexperienced navigator (who could be himself) gets such assistance. This responsibility, along with certain administrative chores, is one of the few distinguishing factors between the duties of a Captain and that of a Mate.

Plaintiffs appreciated this factor in assigning a crew to the Ocean Prince, but an unfortunate set of circumstances created unforeseen confusion relating to which of the watch standers was to assume the position of Captain. Much of the uncertainty stemmed from the fact that Reimer, one of the watch standers on the night in question, had been a regular pilothouse watch stander aboard the Ocean Prince. He had served as both Mate and Captain when the vessel was stationed in the South. After Reimer had left for an extended vacation, the vessel was brought to New York. Reimer had no experience in piloting the Hudson.

The day before Reimer returned to the Ocean Prince, the Mate then aboard took leave. Needing an experienced man, plaintiffs called upon an associated company to supply a suitable person. They sent John Kiernan, a tugboat captain with 30 years experience on the Hudson River. When Kiernan came aboard on February 1, 1974, the preceding Captain was still there, so Kiernan started as Mate. The next day Reimer rejoined the vessel and the Captain left. Kiernan knew that Reimer was a full-time employee of plaintiff regularly assigned to the vessel, and qualified to act as its Captain. He did not know that Reimer had not been aboard the vessel during the couple of months it had been operating on the Hudson or that he had never navigated the Hudson on any vessel.

The vessel commenced the voyage in question shortly after Reimer came on board and, during the half day preceding the grounding, the two had only two brief discussions. Kiernan contends that, since he was only a replacement, and it was Reimer's regular vessel, he believed Reimer was the Captain. Kiernan, however, occupied the Captain's cabin, stood the watch traditionally taken by the Captain and performed certain administrative tasks which were the Captain's responsibility. (Kiernan maintains that he was forced to assume these tasks after the grounding due to Reimer's extremely upset emotional state.) While Kiernan vaguely claims he alerted Reimer when the watch changed to the general navigational situation ahead, his testimony in this regard was not credible, particularly in light of his professed lack of knowledge of Reimer's unfamiliarity with the river.

It remains a mystery why Reimer did not seek assistance as navigation became progressively more difficult due to the treacherous river conditions. (The issue could not be explored because Reimer, who is no longer in plaintiffs' employ, was beyond the subpoena power of the court and did not testify at trial.) His evidence was offered through two lengthy depositions, but in neither of these did any of the counsel explore his motivation in proceeding alone at night up a strong ice-choked river, while aware that he was not picking up the next aid to navigation along the route. One possible answer lies in his having sent his deckhand down to the galley to make coffee prior to the grounding. (He returned, apparently just about the moment of the grounding.) Had the deckhand been available, he could have taken the wheel while a radar range was taken, or been sent forward as a lookout, or, as the best course, been sent to get Kiernan out of his bunk. Had Kiernan been brought to the wheel house, it is very likely he would have quickly detected that they were to the west of the channel and that the buoy was obscured by drifting ice. The question remains whether Reimer's error in judgment is attributable to plaintiff. If so, it is a factor within plaintiff's "privity or knowledge" and a ground for denying limitation of liability under the Limitation of Liability Act, 46 U.S.C. § 183 _et_ _seq_.

Limitation of Liability

The claimant and the Government maintain that limitation should be denied because Reimer's inexperience rendered the vessel unseaworthy. They contend that plaintiff's failure to post a lookout violated Title 33 U.S.C. § 221. They also claim that plaintiffs had failed to provide proper charts aboard the tug. These contentions will be discussed in order.

The burden is clearly upon plaintiffs, in a proceeding under Title 46 U.S.C. § 183, to establish their own lack of privity or knowledge in order to limit their liability. Coryell v. Phipps, 317 U.S. 406 (1943). In Spencer Kellogg & Sons, Inc. v. Hicks, 285 U.S. 502 (1932), the Supreme Court, while denying limitation in that case, nevertheless distinguished situations in which an "emergency must be met by the master alone. In these there is no opportunity of consultation or cooperation or of bringing the proposed action of the master to the owner's knowledge. The latter must rely upon the master's obeying rules and using reasonable judgment." Id. at 511-12. Plaintiffs claim that the collision at issue here presented just such an emergency and contend that it is questionable whether there were any preventative measures which could have been taken to avoid the accident.

Claimants and the Government maintain that Reimer's general unfamiliarity with the Hudson, rather than a specific error of navigational judgment, was the direct cause of the accident. Following this line of argument, they contend that his inexperience created a condition of unseaworthiness which was within the privity and knowledge of plaintiffs. While this view finds support in a nineteenth century case, The Lady Pike, 88 U.S. 1

(1874), modern authority has rejected it. In The Temple Bar, 137 F.2d 293 (4th Cir. 1943) the court stated:

> "the decision [The Lady Pike] cannot be accepted as authority for the broad proposition that it is negligent to put a master in charge of a ship, whatever the voyage, unless he is familiar with all the local conditions he may be expected to encounter. If, as in the case at bar, a master, qualified in other respects, is placed in command, and if he is supplied with charts and publications sufficient to enable a competent man safely to navigate the ship, it is not necessary that he should have prior knowledge of local conditions; and lack of it will not cause the ship to be unseaworthy."

Id. at 297.

It is clear that the court did not base its finding of the Master's competence on his familiarity with the assigned route. The court required, instead, that the Master be qualified in other respects (not specified) and that owner stock the ship with relevant charts and navigational publications.

Plaintiffs maintain that they have fulfilled these conditions. Reimer is a licensed tug captain with several years' experience in tugboats. He had available charts and publications which clearly designated the location of the submerged rocks. Moreover, he was clearly aware of the hazard because he had been searching for the can buoy for a substantial period prior to the grounding. A failure to perceive the hazard might have been indicative of generalized incompetence which would have created an unseaworthy condition. An inadequate response to a known danger presents an error in navigational judgment and, as such, falls outside the owner's privity and knowledge. As stated by a definitive treatise in the field:

> "The navigation of the vessel is under the absolute control of her master . . . and no case has been found where a shipowner, individual or corporate, has been denied limitation because of a liability arising out of an error of management or of navigation on a voyage committed by an employee whom the owner was warranted in believing to be competent with knowledge of his duties."

3 Benedict on Admiralty § 42 at 5-25 (6th ed. 1975).

Defendant also argues that plaintiffs failed to provide proper charts aboard the tug. Reimer denied this assertion in his depositions and claimed that he had referred to both a chart of the Hudson which designated the location of the rock and the Coastal Pilot and Light List The Coastal Pilot and Light List state that during the winter, can buoys become submerged in the ice and cannot be seen. It appears that Reimer was not aware of this condition. But this was due to his own negligence in not referring to the manual, rather than the owner's negligence in not providing it. Since the materials were on board, it is clear that the owner's duty was satisfied. The question is whether the equipment on board was "reasonably fit under the circumstances":

> "Neither the absence of an additional watch officer nor the location of the rudder angle indicator involved negligence or rendered the vessel unseaworthy. Although the presence of an additional officer or the relocation of the indicator might have reduced the possibility of collision, that is not the standard by which we are to determine whether Farrell [the owner] is entitled to limitation. Rather, we must ask whether the procedures and equipment utilized rendered the vessel reasonably fit under the circumstances. . . . the vessel as equipped was reasonably capable of performing the intended mission if properly operated. The accident resulted from lack of care and failure to exercise proper procedures by those on the bridge. For this Farrell is liable, but it is also entitled to limit." (emphasis added; footnote omitted.)

Farrell Lines, Inc. v. Jones, 530 F.2d 7 (5th Cir. 1976) at 12-13. See also United States v. Sandra & Dennis Fishing Corp., 372 F.2d 189 (1st Cir. 1967).

Defendants also contend that there existed a violation of Title 33 U.S.C. § 221 which provides in pertinent part:

> "Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of . . . any neglect to keep a proper lookout . . . ."

Mate Reimer was alone in the wheelhouse at the time of the casualty since he had sent the deckhand, Hebert, below to make coffee.

The parties appear to have assumed, with some support from precedent (see Dwyer Oil Transport Co. v. The Edna M. Matton, 255 F.2d 380 (2d Cir. 1958); The Supply No. 4 (The Dalzellea), 109 F.2d 101 (2d Cir. 1940)) that there is no compliance with the statute where a tug master simultaneously serves as a lookout. It seems somewhat unreasonable to require a small vessel running in uncongested waters to maintain both a pilot and a lookout at all times. In fact, one court in a case involving a tugboat stated that the rule requiring a separate lookout was limited to large vessels. In other instances, a court should weigh "the size of the vessel and the opportunity of the navigator to have a full view of the sea." Anthony v. International Paper Co., 289 F.2d 574, 580 (4th Cir. 1961). It is unclear whether the law of this Circuit requires a tug to have a lookout at all times or only when conditions of navigation require it. Poling Russell, Inc. v. United States, 196 F.2d 939 (2d Cir. 1952).

Assuming, arguendo, that the law of this Circuit requires the posting of a separate lookout on a tug at all times, a violation would then be established and the Pennsylvania rule, 86 U.S. 125 (1874) would come into play with the effect that the owner must prove that the violation could not have contributed to the casualty in any way. See Ira S. Bushey & Sons v. United States, 172 F.2d 447 (2d Cir. 1949). This is not, however, an unbearable burden. Dwyer Oil Transport Co. v. The Edna M. Matton, supra at 382; National Bulk Carrier v. United States, 183 F.2d 405 (2d Cir.), cert. denied, 340 U.S. 865 (1950).

There was no proof whatever that a lookout forward could have observed the ice stranded buoy. The buoy, according to the evidence, was not visible until freed from the ice by the wake of the passing tug. Indeed, as indicated earlier, had the deckhand been in the wheelhouse, he would have been more useful taking the wheel and freeing Reimer to either take navigational fixes or call Kiernan, the experienced pilot. Therefore, the failure to post a lookout cannot be said to have contributed to the collision.

Finally, we have the question concerning the plaintiffs' responsibility for the alleged confusion as to who was to be the Captain of the vessel. Kiernan testified that had he known he was the Captain, he would have assured himself that Reimer was familiar with the river before allowing him to take the wheel under the conditions. Again, errors in management aboard the vessel may not be imputed to the owners so as to deny limitation. South Carolina Highway Dep't v. Jacksonville Shipyards, Inc., 1976 A.M.C. 456 (S.D. Ga. 1975); see also New York Marine No. 10, (The C. F. Coughlin) 109 F.2d 564,565 (2d Cir. 1940); Petition of Tracy, 194 F.2d 362, 363 (2d Cir. 1952).

It is argued that the failure to make the chain of command apparent prior to departure was an error by the managing officers of the corporation and, consequently, within the owner's privity and knowledge. Craig v. Continental Ins. Co., 141 U.S. 638 (1891). But without regard to whether he acted in the capacity of Captain or Mate, Reimer was well aware that he was unprepared to navigate under the difficult conditions which were rapidly developing. Kiernan was quite emphatic that he was willing to render assistance to Reimer whether he was Captain or Mate. Therefore, it was Reimer's failure to seek assistance, more than Kiernan's failure to offer it, that caused the accident. Reimer's failure in this regard is similar to the neglect of an otherwise competent officer to consult available charts and aids to navigation--an event which is not an unseaworthy condition for which the owner is responsible. California and Hawaiian Sugar Co. v. Columbia S. S. Co., 391 F. Supp. 894 (E.D. La. 1972), aff'd, 510 F. 2d 542 (5th Cir. 1975). Plaintiffs are, therefore, entitled to limit their liability.

Governmental Responsiblity for the Grounding

We turn now to the plaintiff's contention that the Government's negligence in maintaining the aids to navigation in the area of the grounding was a factor in the grounding and, therefore, the Government should be found liable for negligence under the Suits in Admiralty Act, 46 U.S.C.§§ 741-752.

In Indian Towing Co. v. United States, 350 U.S. 61 (1955), the Supreme Court recognized that liability under the Federal Tort ClaimsAct extended to the Coast Guard's failure to adequately maintain a lighthouse. Contrasting nonfeasance and misfeasance, the Court held that, while the Coast Guard had no obligation to supply lighthouse services, once it exercised its discretion by electing to do so, it must use due care. Consequently, the Coast Guard was under a duty to maintain the equipment and to warn mariners in the event the lighthouse became inoperative.

Indian Towing was applied to the placement and maintenance of buoys by this court in Afran Transport Co. v. United States, 309 F. Supp. 650 (S.D.N.Y. 1969), aff'd, 435 F.2d 213 (2d Cir. 1970), cert. denied, 404 U.S. 872 (1971). In that case, damages were sought following the grounding of an oil tanker on a reef caused by a marker buoy having drifted out of position. Again, while the decision to erect a navigational aid lay within the Coast Guard's discretion, having acted, the Coast Guard was required to act with due care.

Thus Indian Towing imposes a dual responsibility upon the Coast Guard, once it has decided to locate an aid to navigation in a waterway. First, the Coast Guard must use due care to see that the aid is properly maintained and operated. Secondly, should an aid become inoperative the Coast Guard has an additional duty to warn mariners of the absence of the expected aid. Merely warning mariners of a perilous condition, as a rule, will not absolve the Coast Guard of the duty to correct a dangerous condition, but adequate warnings may absolve them from a particular liability. Compare Greer v. United States, 505

F.2d 90 (5th Cir. 1974) with De Bardeleben Marine Corp. v. United States, 451 F.2d 140 (5th Cir 1971).

In the instant case, the Coast Guard was confronted with submerged rocks at the periphery of the Hudson River channel relatively close to another aid to navigation (Con Hook Light). This area had a good safety record during most of the year while the lighted aid was in use. At the time of the Ocean Prince grounding, the buoy was in position, although obscured by ice. Applying Indian Towing to these facts, the Coast Guard had the duty to maintain the buoy or to warn of any interruption of service. The evidence demonstrates that the Coast Guard, in the Coast Pilot, warned mariners of the possibility of ice obstructing buoys in this particular span of waterway and, additionally, the "Notice to Mariners" for the week of the accident made particular mention of the problem of ice covered buoys in that area. Absent a showing that the Coast Guard had notice of ice covering this particular buoy during the day in question (and could have repaired it), the Court is not persuaded that the Coast Guard was negligent in its servicing of the buoy.

The Coast Guard had determined (and the evidence supported its conclusion) that during the winter months a can buoy was the most effective floating aid to navigation available. The large, lighted buoy not only was more vulnerable to flow ice, but was also subject to the added danger that the light would be broken, thereby extinguishing the expected aid.

The plaintiff does not strenuously challenge this but argues, instead, that the problems of maintaining the buoy ice free and the dangers of the location, warranted the installation of different forms of aids to navigation, either constructed on man-made islands or shore-based range lights.

In considering the dangers of the location, some evidence was admitted concerning accidents at the site during the prior thirty years, as well as two groundings (one of which resulted in a severe ecological disaster) occuring in the following couple of years.

Courts have generally recognized that evidence of a prior similar accident has some tendency to establish a dangerous or defective condition at the place in question. Hayes v. Lane Construction Corp., 260 F.2d 279 (2d Cir. 1958) (applying New York law); Balchunas v. Palmer, 151 F.2d 842 (2d Cir. 1945) (applying Conn. law). Such evidence draws its relevance from the principle that similar causes can be expected to produce similar effects, so that admissibility hinges upon a demonstration that the conditions had been substantially similar on all occasions. Hayes, supra; Balchunas, supra; Knight v. Baltimore & Ohio R.R. Co., 8 F.R.D. 261 (S.D.N.Y. 1948).

Judge Weinstein, in his treatise on evidence, does not distinguish between prior and subsequent accidents, but states generally that

> "[e]vidence of other accidents in the same place or involving the same machinery or instrumentality is generally admissible, not because it shows that defendant has a general tendency to be negligent, but because it tends to prove either (1) the existence of a dangerous or defective condition where this is in issue or (2) that defendant knew or should have known of the dangerous or defective condition.
>
> "The requisite similarity of accidents depends on what the evidence is designed to prove:
>
> 'If the proof of other accidents is offered to establish the dangerous condition, logic would require similarity of hazard. But if offered to prove notice of danger, the requisite is the warning quality of the other accident. Thus evidence of a previous accident at the place, unknown to the owner defendant, would be irrelevant to prove notice of the danger, but it may be relevant to prove the dangerous condition of the place. Likewise, evidence that is unnecessary to prove dangerous condition may be logically relevant to prove the notice of the hazard. Of course as the circumstances of other accidents are more similar to the one in question, the probative value of such evidence for either or both purposes is likely to be greater.'" 2 J. Weinstein & M. Berger, Weinstein's Evidence § 404 [11] at 404-76 (1976), citing, Trautman, "Logical or Legal Relevancy--A Conflict in Theory," 5 Vand. L. Rev. 385, 402 (1952).

While the subsequent disasters have emphasized the navigational hazard in this area, we must evaluate the reasonableness of the Coast Guard's decisions on the basis of facts available at the time of the grounding. Prior thereto, and over a period of thirty or so years, despite an extremely heavy volume of traffic, there had only been two groundings under similar circumstances. (One of them, to the mortification of the Coast Guard, involved the Cutter Sauk in 1963. Another cutter, in completely dissimilar circumstances, ran aground in 1969 -- causing the reef to be known locally as "Coast Guard Rock".)

Although, at the time of the accident the location was not considered to have a high priority among Hudson River sites needing additional aids to navigation, some consideration was given to the situation by the Coast Guard's officials. Evidence as to the cost and feasibility of aids to navigation other than a buoy at this location persuades the Court that the Coast Guard used due care in its decision to mark the reef in the winter of 1974 with a black can buoy. The Coast Guard weighed the need for some other aid to navigation against the costs of various fixed lights, constructions on the pinnacle or its demolition. It also considered the ecological problems in establishing shore based aids, the priority needs of other, more dangerous, locations and the funds available.

In the absence of showing that a can buoy was so ineffective that its choice constituted negligence per se, the Coast Guard should not be divested of its executive discretion to choose such aids to navigation as will most effectively and efficiently function within its fixed budgetary limitations. In so concluding, it must be stressed that this evaluation is limited to the history of the hazard in 1974. The Coast Guard's liability for the subsequent groundings, and the wisdom of erecting different types of aids to navigation at this time, are issues not before this Court.

There is a further reason for refusing to find the Coast Guard liable for this accident. Reimer had available for navigational purposes both radar, which could take bearings and ranges on prominent objects (such as Bear Mountain Bridge) and the Con Hook Light, on which a visual bearing could have been taken. Nevertheless, he strayed west of the channel looking for an obscured buoy. The premise that the presence of additional aids might have assisted in correcting his navigational error would be a

> "fortuity [having] nothing to do with proximate cause. Liability must rest on causal relationship between the negligent aspect of the conduct and the harm resulting from the conduct."

American Smelting and Refining Co. v. S.S. Irish Spruce, 548 F.2d 56, 60 (2d Cir. 1977).

It cannot be said, therefore, that the negligence, if any, of the Government in not establishing more effective aids to navigation was the proximate cause of the grounding.

The Amount of Plaintiff's Liability Under the Water Quality Improvement Act

The Water Quality Improvement Act of 1970, as amended by the Federal Water Pollution Control Amendments of 1972, was passed by Congress in the wake of two disastrous oil spills: the running aground of the tanker, Torrey Canyon, off the coast of England in 1967 and the Santa Barbara drilling disaster in 1969. The primary purpose of the new legislation was to permit the Government to collect cleanup costs directly from the polluter.

To effect this goal, the Act provided, in Section 102(f)(1) of the Water Quality Improvement Act of 1970, later modified at 33 U.S.C.A. § 1321(f)(1) (Supp. 1977) that:

> "Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged ... shall ...
>
> be liable to the United States Government for the actual costs incurred ... in an amount not to exceed $100 per gross ton of such vessel or $14,000,000, whichever is lesser, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs." (emphasis added)

In other words, the owner or operator of a vessel which discharges oil can limit its liability, provided the government cannot show willful negligence or misconduct.

The legislative history indicates that conflicting policies resulted in both the limitation amount and the willful negligence standard for breaking the limitation. The Senate bill, as introduced, would have imposed liability only if negligence were shown. The original limitation amount was the lesser of $450 per gross ton or $15 million. The $450 amount was based upon the estimated cleanup cost of one ton of oil. Later evidence indicated that while this figure reflected an accurate, cleanup estimate, it was improbable that any vessel would discharge its entire cargo. The $100 figure was thereafter substituted to approximate actual, anticipated costs. S. Rep. No. 91-351 at 4, 91st Cong., 1st Sess. (1969), 3 E.P.A. Legal Compilation (Water) at 1327.

While the limitation amount appears to reflect actual cleanup costs, this goal is not realized where a third party causes the oil spillage. Section 102(g) 33 U.S.C.A. § 1321(g) (Supp. 1977) controls third party liability and provides that subject to the same defenses provided in Section 102(f)(1), a third party which causes an oil spill will be liable instead of the owner or operator of the spilling vessel. This section also contains a limitation of liability, and further distinguishes situations where the third party is the owner or operator of a *vessel* from other third party situations. Where the third party *is* an owner or operator of a vessel "the liability of such third party ... shall not exceed $100 per gross ton *of such vessel* or $14,000,000, whichever is the lesser." (emphasis added). The section goes on to provide that where the third party causing the spillage is not an owner or operator of a vessel, its liability "shall not exceed the limitation which would have been applicable to the *owner or operator of the vessel*... *from which the discharge actually occurred*." (emphasis added)./ Clearly this represents a conscious legislative choice to inject traditional admiralty concepts into the limitation calculation by limiting a third party vessel owner's liability with reference to *his* vessel rather than the vessel which actually spilled the oil. Obviously, once the limitation is calculated with reference to a vessel other than that which spilled the oil, the correlation between vessel gross tonnage and actual cleanup costs is destroyed.

The legislative history indicates that the drafters, in providing the third party defense, envisioned a situation where the third party vessel collides with an oil-carrying vessel. S. Rep. No. 91-351 at 5, 91st Cong., 1st Sess. (1969), 3 E.P.A. Legal Compilation (Water) at 1329. The available legislative materials provide no clue as to whether the drafters ever considered the situation presented where a substantially smaller vessel either collides with or, as presented here, negligently causes the oil spillage. It is inconceivable that Congress was unaware that much of the oil moving on inland waterways is carried by barges and that the tugs pushing them are often owned by third parties. Faced with the clear choice to limit a third party's liability with reference to the gross tonnage of a vessel not spilling the oil, the Court must construe the section in accordance with the clear import of its terms, even if the effect would seem contrary to the general legislative intent. Where statutory language is clear and unequivocal, there is no occasion for the Court to resort to interpretive aids. United States v. Oregon, 366 U.S. 643, 648 (1961); Arkansas Valley Industries, Inc. v. Freeman, 415 F.2d 713, 717 (8th Cir. 1969).

In the face of unequivocal statutory language and the absence of conflicting legislative history, the Government nevertheless contends that the "flotilla rule" should apply.

Application of this rule would result in the calculation of the limitation amount by reference to the combined gross tonnage of the tug and the barge. While no authority has been submitted concerning the application of the rule in the statutory context presented here, it has been applied in traditional admiralty petitions for exoneration or limitation of liability. The Supreme Court in *Sacramento Nav. Co. v. Salz*, 273 U.S. 326 (1927) required surrender not only of a barge but also of the steamboat towing the barge in an action by the owners of the barge's cargo. In a later case, *Standard Dredging Co. v. Kristiansen*, 67 F.2d 548, 550 (2d Cir. 1933), the Second Circuit interpreted the flotilla rule to permit recognition of a tug and barge as a single vessel where they are "owned in common and engaged in a common enterprise." Thus, the rule which emerged, as the Government concedes, is that where there exists a contractual or other obligation running from the petitioner for limitation to the claimant and a flotilla of commonly owned vessels was used to fulfill the obligation, the flotilla is regarded as one vessel for calculating the limitation fund.

The Tug Ocean Prince and the barge were not owned by the same entity nor is there any vestige of a contractual relationship running between the owners of either of these two vessesl and the Government. Consequently, the flotilla rule, as traditionally stated, would be inapplicable to the facts of this case. The Government, conceding this much, would have this Court break new ground, and apply a mutation of the rule to flesh out the terms of the statute. As the discussion of the language and history of the statute indicates, the provision limiting the liability of third party vessel owners to the value of their vessel is unambiguous. The Court cannot substitute its notions of proper legislative goals for those adopted by Congress. Arkansas Valley Industries, Inc. v. Freeman, supra.

The Amount of the Penalty To be Assessed Against Pittston

The penalty provision added by the Federal Water Pollution Control Act Amendments of 1972, codified at 33 U.S.C. § 1321(b)(6) (Supp. 1977) reads in pertinent part:

> "Any owner or operator of any vessel...from which oil... is discharged...shall be assessed a civil penalty...of not more than $5000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. ..."

A civil penalty in the amount of $5,000 was assessed against Pittston after a hearing before a Coast Guard hearing examiner. Pittston had refused to pay the penalty on the authority of the federal district court holding in United States v. LeBeouf Bros. Towing Co., 377 F. Supp. 558 (E.D. La. 1974). The lower court had held that the penalty provided by 33 U.S.C.A. § 1321(b)(6) (Supp. 1977) was criminal in nature and could not be imposed except in a criminal proceeding which afforded adequate protections for Fifth and Sixth amendment rights. This holding was thereafter reversed on appeal, 537 F.2d 149 (5th Cir. 1976) and a petition for certiorari has been denied, 97 S. Ct. 1688 (1977). With the exception of this single, lower court holding, courts appear to be unanimous in finding the penalty civil. United States v. General Motors Corp., 403 F. Supp. 1151 (D. Conn. 1975); United States v. Eureka Pipeline Co., 401 F. Supp. 934 (N.D.W. Va. 1975); United States v. Independent Bulk Transport, Inc., 394 F. Supp. 1319 (S.D.N.Y. 1975); United States v. W. B. Enterprises, Inc., 378 F. Supp. 420 (S.D.N.Y. 1974).

The penalty provision at issue holds the owner or operator of a vessel strictly liable for the penalty, following a hearing at which normal due process safeguards are extended. Section 1321(b)(6) provides that "[i]n determining the amount of the penalty... the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the [illegible] of the violation, shall be considered ...."

The Coast Guard has stated its interpretation of these standards in "Coast Guard Policy for the Application of Civil Penalties Under Section 311(b)(6), FWPCA," which was printed as an appendix to the lower court decision in United States v. LeBeouf Bros. Towing Co., supra, at 569-70. While the statute does not explicitly include the degree of the actor's culpability as a factor in assessing the amount of the fine, the Coast Guard policy statement emphasizes that "[a] number of considerations may be made in determining the gravity of a violation, such as the degree of culpability associated with the violation, the prior record of the responsible party, and the amount of oil discharged. Substantial intentional discharges should result in severe penalties, as should cases of gross negligence, and so on. This is not to suggest that other considerations may not combine to determine the gravity of a violation." Id. at 569 (emphasis added).

In this context, it is valuable to note that while the 1972 amendments make no reference to culpability as a prerequisite for a substantial fine*, the predecessor of this penalty did. Section 11(b) of the Water Quality Improvement Act of 1970, Pub. L. No. 91-224, previously codified at 33 U.S.C. § 1161(b)(5), provided for a maximum fine of $10,000 for "knowing" discharges. The 1966 amendments to the Oil Pollution

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* The Senate bill provided for assessment of the penalty where the government could show that the owner or operator acted "wilfully or negligently." S. Rep. 92-414, 92nd Cong., 2d Sess., reprinted in [1972] U.S. Code & Ad. News 3732.

Act of 1924 created liability when a discharge resulted from a "grossly negligent or willful act." Note, Liability for Oil Pollution Cleanup and the Water Quality Improvement Act of 1970, 55 Cornell L. Rev. 973 (1970).

Thus, while the section does not expressly require culpable behavior, prior legislation and the Coast Guard interpretive standards for implementing the penalty all make reference to some element of negligent or knowing conduct prior to the imposition of a substantial penalty. The Government contends that the maximum fine should be assessed against Pittston on the sole basis of the "gravity of the violation," without any consideration of the degree of Pittston's culpability. The Government further argues that, while third party causation does not provide a defense to imposition of the penalty, it does provide a basis for indemnity.

The only case disclosed by our research where the third party's responsibility is discussed is United States v. General Motors Corp., 403 F. Supp. 1151 (D. Conn. 1975). In that case, vandals opened the valves of several of defendant's oil storage tanks causing oil to flow into a nearby river. In an extended analysis of the history and purpose of the penalty, Judge Clarie found that while third party causation did not constitute a defense, defendant's lack of culpability would require reduction of the penalty to the nominal sum of one dollar.*

Of course, the present case differs from General Motors in that the purportedly culpable party, The Tug Ocean Prince, is before the Court. There are three possible responses to this situation, in that the Court could: 1) obviate the need for indemnity by reducing the fine to a nominal sum; 2) follow the Coast Guard's procedure and assess the entire fine against Pittston while recognizing a right to indemnity; 3) assess the fine against the allegedly culpable party, The Tug Ocean Prince. The first course would follow the only authority on point. The second alternative requires more discussion.

Section 1321 does provide generally for indemnity by stating that:

> "The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel ... may have against any third party whose acts may in any way have caused or contributed to such discharge. ..."

33 U.S.C.A. § 1321(h) (Supp. 1977). The issue then becomes whether the penalty imposed by Section 1321(b)(6) is a "liability" so as to provide a basis for indemnity. The parties draw support for their indemnity theory by pointing to the penalty provided in 33 U.S.C.A. § 1321(b)(2)(iii) (Supp. 1977) which imposes a "penalty"

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*The parties had stipulated that the proceedings before Judge Clarie should proceed as a trial de novo, and therefore the judge indicated that it was appropriate "to consider whether the sanction imposed by the administrative agency conforms to the facts brought out at the trial." The court found that the Coast Guard's finding that defendants were negligent deviated from the facts.

in lieu of cleanup costs where it is impossible to remove a hazardous substance from the water. This penalty, unlike that of Section 1321(b)(6), is denominated a "liability" and is subject to the defense of third party causation.

Clearly, no indemnity could have been sought had the penalty been construed as criminal, intended to punish the actor. The weight of current authority, discussed above, has concluded that this particular penalty is civil and, therefore, the claimed right to indemnity is at least tenable. However, the penalty imposed in lieu of clean-up costs correlates not to the penalty provision at issue here, but rather to the Government's action for the actual costs of clean-up. Both of these actions recognize the third party defense and, thereby, implicitly provide a ground for indemnity. The absence of a third party defense in this penalty provision, the language of the statutes, and the purposes of the various remedies supplied to the Government, lead to the conclusion that no indemnity right was contemplated for the penalty imposed by Section 1321(b)(6), even though it is civil in nature.

Finally, the Government urges that the "flotilla rule" should apply not only to determine the correct limitation amount but also the possible imposition of the fine on the third party, Tug Ocean Prince. Both the penalty provision, Section 1321(b)(6), and the provision governing primary liability for cleanup costs, Section 1321(f), impose liability on the "owner or *operator* of a vessel." It is at least a tenable construction of the statutory language, as applied to the facts of case, that "operator" should be construed to include to a tug operating a "dumb" barge. It is uncertain whether this construction of the statute was argued before the Coast Guard hearing examiner, but by imposing the fine solely upon Pittston, the examiner implicitly rejected this view. Similarly, the Government's stance in its action for cleanup costs in that *Tug Ocean Prince* is liable, if at all, under Section 1321(g) which concerns third party liability. Thus, the Government has adopted a contrary position and has not taken the required administrative steps to impose liability on plaintiff.

For these reasons, and in light of the *General Motors* decision, it appears to be the better course not to recognize a right to indemnity and, instead, to permit the absence of culpability to mitigate the amount of the fine. The case should be remanded to the Coast Guard to set a fine consistent with the degree of culpability attributable to the barge owner.

ORDER

1. Plaintiffs are entitled to limit their liability to the value of the Tug Ocean Prince and the amount of her pending freight immediately after the grounding, for which amount Pittston is entitled to judgment with costs.

2. Pittston, not having been responsible for the oil spill, the Government's cause of action against it for cleanup costs is dismissed with costs.

3. The claims of plaintiffs and Pittston against the United States (in 74 Civ. 3358) and Pittston's counterclaim (in 75 Civ. 5801) are dismissed with costs.

4. Plaintiffs are liable to the United States for cleanup costs not to exceed $19,800.

5. The fine against Pittston is remanded to the Coast Guard for reconsideration consistent with this opinion. Pittston's claim for indemnity from plaintiffs is dismissed with costs.

6. If the parties cannot agree on the amount of cleanup costs or the amount of the limitation fund, they should advise the Court and the matter will be set for inquest.

SO ORDERED:

Dated: New York, N. Y.
September 6, 1977.

Gerard L. Goettel
U.S.D.J.

COMPLAINT.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- -X

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PITTSTON MARINE TRANSPORT CORPORATION, RED STAR TOWING & TRANSPORTATION COMPANY, TUG OCEAN PRINCE, INC.,

-and-

tug OCEAN PRINCE and barge NEW LONDON, *in rem,*

Defendants.

75 Civ. 5801.

- -X

Plaintiff, United States of America, complaining of the defendants, alleges upon information and belief, as follows:

FIRST CAUSE OF ACTION:

1. This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and a claim under 33 U.S.C. 1321.

COMPLAINT

2. Plaintiff is the United States of America, a corporate sovereign, authorized to sue pursuant to 28 U.S.C. 1345.

3. The defendant, Tug Ocean Prince, Inc., is a corporation organized and existing pursuant to the laws of the State of New York, with offices and places of business at 32 Tudor Lane, Scarsdale, New York, and 500 Fifth Avenue, New York, New YOrk, within the jurisdiction of this Honorable Court.

4. Defendant, Red Star Towing & Transportation Company, is a corporation organized and existing pursuant to the laws of one of the States having an office and place of business at 500 Fifth Avenue, New York, New York, within the jurisdiction of this Honorable Court.

5. The defendant, Tug Ocean Prince, Inc., at all material times owned the tug Ocean Prince.

6. The defendant, Red Star Towing & Transportation Company, at all material times manned and victualed the tug Ocean Prince.

7. The defendant, Red Star Towing & Transportation Company, at all material times operated the tug Ocean Prince.

8. The defendant, Red Star Towing & Transportation Company, at all material times managed the tug Ocean Prince.

9. The defendant, tug Ocean Prince, is a tugboat of steel construction engaged in the business of towage on navigable waters of the United States and transportation for hire.

10. The defendant, Pittston Marine Transport Corporation, is a corporation organized and existing pursuant to the laws of one of the States having an office and a place of business at 380 Madison Avenue, New York, New York, within the jurisdiction of this Honorable Court.

11. The defendant, Pittston Marine Transport Corporation, at all material times owned the barge New London.

12. The defendant, Pittston Marine Transport Corporation, at all material times operated the barge New London.

13. The defendant, Pittston Marine Transport Corporation, at all material times managed the barge New London.

14. The defendant, Pittston Marine Transport Corporation, at all material times manned the barge New London.

15. The barge New London is a tank barge engaged in the carriage of cargo for hire upon the navigable waters of the United States.

16. The barge New London now is, or during the pendency of process herein will be, within the jurisdiction of this Honorable Court.

17. Tug Ocean Prince now is, or during the pendency of process herein will be, within the jurisdiction of this Honorable Court.

18. On or about February 3, 1974, the tug Ocean Prince made fast to the barge New London, both vessels proceeding and operating as one unit and one flotilla, the motive power being supplied by, and the navigation being controlled by, the tug Ocean Prince, were proceeding northbound in the Hudson River.

19. As the flotilla so proceeded, the barge New London, being the forward part of the flotilla, was caused to strike a well known and well charted area of rocks on the westerly side of the Hudson River on the left hand side of the navigable channel in an area north of the Bear Mountain bridge, resulting in the spillage or discharge of oil into the waters of the Hudson River from the barge New London, thereby causing extensive and irreparable harm to the environment.

20. The Hudson River is a navigable water of the United States.

21. The discharge of oil in harmful quantities into or upon the navigable waters of the United States was, and is, prohibited and was in violation of 33 U.S.C. 1321(b).

22. Pursuant to 33 U.S.C. 1321(b)(6), and after a hearing was held by the Commander, Third Coast Guard District, a civil penalty in the amount of $5,000.00 was assessed against defendant, Pittston Marine Transport Corporation.

23. Defendants appealed to the Commandant, United States Coast Guard, and the assessment of such civil penalty was affirmed and such affirmance was contained in a letter dated June 5, 1975 and sent to the defendants which requires that the civil penalty be paid within thirty days from the receipt of the aforementioned letter.

24. The civil penalty of $5,000.00 has not been paid by the defendant, Pittston Marine Transport Corporation, the owner of the barge New London, although defendants were duly notified of such penalty and payment was duly demanded by plaintiff.

25. By reason of the foregoing, the defendants Pittston Marine Transport Corporation, and barge New London became and still are liable to the plaintiff, United States of America, in the amount of $5,000.00.

SECOND CAUSE OF ACTION:

26. The plaintiff realleges paragraphs 1, 2, 9 through 16 and 18 through 21 hereinabove with the same force and effect as if fully stated herein.

27. As a result of the aforesaid discharge of oil into the waters of the Hudson River, the United States Coast Guard expended the sum of $169,201.47 in cleaning and removing the spilled oil from the waters of the Hudson River and the surrounding areas.

28. Pursuant to 33 U.S.C. 1321(f), the defendant, Pittston Marine Transport Corporation, became liable to the United States of America for the aforesaid cost of removal of the spilled oil.

29. By a letter dated September 16, 1975, the United States Coast Guard demanded from the defendant, Pittston Marine Transport Corporation, the aforesaid sum of $169,201.47, but the defendants have refused to pay said amount, or any part thereof.

THIRD CAUSE OF ACTION:

30. The plaintiff realleges paragraphs 1 through 9, 15, and 17 through 21 and 27 hereinabove with the same force and effect as if fully stated herein.

31. The aforesaid striking and subsequent discharge of oil into the waters of the Hudson River were solely caused by the negligence of defendants, Tug Ocean Prince, Inc., Red Star Towing & Transportation Company and/or by the negligence of those for whom the defendants are

responsible, including, but not limited to, the negligence of those in charge of the navigation of the tug Ocean Prince.

32. The negligence of the defendants, Tug Ocean Prince, Inc. and Red Star Towing & Transportation Company, and those for whom those defendants are responsible, amounts to willful negligence or willful misconduct under 33 U.S.C. 1321(g) in the following respects, among others:

A. The navigation of the tug Ocean Prince and the flotilla at material times was in charge of an incompetent person, who had not navigated in the Hudson River for a number of years, was not familiar with the aids to navigation there, the ice conditions to be encountered and other dangers inherent to navigation in the Hudson River.

B. That the person in charge of the navigation of the flotilla was not properly trained in the use of the tug's aids to navigation.

C. The defendants knew, or should have known, that the person in charge of the navigation of the tug Ocean Prince and the flotilla, of approximately 400 feet in length, was inexperienced in the waters of the Hudson River and was not properly trained in the use of all the aids to navigation on board the tug.

D. That tug Ocean Prince and thereby the flotilla was unseaworthy in other respects which will be shown at the time of trial.

33. By a letter dated September 18, 1975 the United States Coast Guard demanded of the defendants the payment of the sum of $169,201.47 no part of which has been paid although payment thereof has been duly demanded.

34. By reason of the foregoing the United States of America has been damaged in the amount of $169,201.47 for which the defendants, Tug Ocean Prince, Inc. and Red Star Towing & Transporation Company, are liable.

WHEREFORE, the plaintiff, United States of America, prays that:

a. that the Court adjudge the defendant, Pittston Marine Transport Corporation, liable for the civil penalty of $5,000.00, together with interest and costs of this action;

b. that the Court adjudge the defendants, Pittston Marine Transport Corporation and the barge New London liable for the cost of cleaning up of the spilled oil in the amount of $169.201.47, together with interest and costs of this action;

c. that the Court alternatively adjudge the defendants, Tug Ocean Prince, Inc. and Red Star Twoing & Transportation Company and the tug Ocean Prince, liable for the clean-up costs in the amount of $169,201.47, together with interest and costs of this action;

d. that the plaintiff have such other and further relief as the court may deem just.

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By: ________________________
Janis G. Schulmeisters

/

ANSWER OF DEFENDANTS RED STAR TOWING & TRANSPORTATION COMPANY AND TUG OCEAN PRINCE, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

PITTSTON MARINE TRANSPORTATION CORPORATION, RED STAR TOWING & TRANSPORTATION COMPANY, TUG OCEAN PRINCE, INC., :

-and- :

Tug OCEAN PRINCE and Barge NEW LONDON, *in rem*, :

Defendants. :

- -x

75 Civ. 5801 (JMC)

ANSWER

/Defendants, Red Star Towing & Transportation Company and Tug Ocean Prince, Inc., by their attorneys, Healy & Baillie, answering the complaint herein allege upon information and belief as follows:

1. Admit the allegations contained in paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20 and 33 of the complaint.

2. Deny information or knowledge sufficient to form a belief as to the allegations contained in paragraphs 16, 17, 22, 23, 24, 25, 28 and 29 of the complaint.

ANSWER OF DEFENDANTS RED STAR TOWING & TRANSPORTATION COMPANY AND TUG OCEAN PRINCE, INC.

3. Deny the allegations contained in paragraph 3 of the complaint, except admit that defendant, Tug Ocean Prince, Inc. is a corporation organized and existing pursuant to the laws of the State of New York, with an office and place of business at 32 Tudor Lane, Scarsdale, New York, within the jurisdiction of this Honorable Court.

4. Deny the allegations contained in paragraph 18 of the complaint, except admit that on or about February 3, 1974, the Barge NEW LONDON, made fast to and in forward tow of the Tug OCEAN PRINCE, proceeded northbound in the Hudson River.

5. Deny the allegations contained in paragraph 19 of the complaint, except admit that on or about February 3, 1974, the Barge NEW LONDON struck an underwater object in the vicinity of the "25" black can buoy which is located north of Bear Mountain Bridge, and just below Con Hook Island in the navigable waters of the Hudson River, and that as the result of said striking, some part of a cargo of oil onboard the Barge NEW LONDON was discharged into the waters of the Hudson River.

6. Deny the allegations contained in paragraphs 27, 31, 32, 33 and 34 of the complaint.

7. The allegations contained in paragraph 21 of the complaint are conclusions of law which defendants are not required to answer and leave to the decision of this Honorable Court.

ANSWER OF DEFENDANTS RED STAR TOWING & TRANSPORTATION COMPANY AND TUG OCEAN PRINCE, INC.

8. Defendants repeat and reallege as if set forth at length herein, each admission, denial and denial of knowledge above, which correspond to the allegations contained in the paragraphs which are incorporated by reference in paragraphs 26 and 30 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. The grounding of the Barge NEW LONDON which occurred on February 3, 1974, was caused without any fault, negligence or lack of care on the part of defendants, Red Star Towing & Transportation Company and Tug Ocean Prince, Inc., but was caused by and resulted at least in part by the negligence of the plaintiff, United States of America, in the maintenance of aids to navigation in the vicinity of the grounding existing at the time of the accident, and by the failure of the plaintiff to maintain aids to navigation which would have provided adequate warning to vessels in navigation of hazards which existed in the vicinity of the aforesaid grounding on February 3, 1974.

ANSWER OF DEFENDANTS RED STAR TOWING & TRANSPORTATION COMPANY AND TUG OCEAN PRINCE, INC.

WHEREFORE, defendants Red Star Towing & Transportation Company and Tug Ocean Prince, Inc. pray that the complaint be dismissed with costs.

Dated: New York, New York
January 5 , 1976

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Company and Tug Ocean Prince, Inc.

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ANSWER OF DEFENDANT PITTSTON MARINE TRANSPORT CORPORATION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -X
UNITED STATES OF AMERICA,
:
Plaintiff, Index No.
75 Civ. 5801
-against- :

PITTSTON MARINE TRANSPORT CORPORATION,
RED STAR TOWING & TRANSPORTATION COMPANY, :
TUG OCEAN PRINCE, INC.,
ANSWER
-and- :

tug OCEAN PRINCE and barge NEW LONDON,
in rem., :

Defendants.
:
- -X

Defendant, PITTSTON MARINE TRANSPORT CORPORATION, answering the complaint of the plaintiff by its attorneys McHugh, Heckman, Smith & Leonard, alleges upon information and belief as follows:

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

FIRST: Defendant, admits the allegations contained in paragraph No. 1 of the complaint.

SECOND: Defendant admits the allegations contained in paragraph No. 2 of the complaint.

ANSWER OF DEFENDANT PITTSTON MARINE TRANSPORT CORPORATION

THIRD: Defendant admits the allegations contained in paragraph No. 3 of the complaint.

FOURTH: Defendant admits the allegations contained in paragraph No. 4 of the complaint.

FIFTH: Defendant denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph No. 5 of the complaint.

SIXTH: Defendant denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph No. 6 of the complaint.

SEVENTH: Defendant denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph No. 7 of the complaint.

EIGHTH: Defendant denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph No. 8 of the complaint.

NINTH: Defendant admits the allegations contained in paragraph No. 9 of the complaint.

TENTH: Defendant admits the allegations contained in paragraph No. 10 of the complaint.

ELEVENTH: Defendant admits the allegations contained in paragraph No. 11 of the complaint.

ANSWER OF DEFENDANT PITTSTON MARINE TRANSPORT CORPORATION

TWELFTH: Defendant admits the allegations contained in paragraph No. 12 of the complaint.

THIRTEENTH: Defendant admits the allegations contained in paragraph No. 13 of the complaint.

FOURTEENTH: Defendant admits the allegations contained in paragraph No. 14 of the complaint.

FIFTEENTH: Defendant admits the allegations contained in paragraph No. 15 of the complaint.

SIXTEENTH: Defendant admits the allegations contained in paragraph No. 16 of the complaint.

SEVENTEENTH: Defendant denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph No. 17 of the complaint.

EIGHTEENTH: Defendant denies that the tug OCEAN PRINCE and the barge NEW LONDON were operating as one unit, and one flotilla, and except as so denied, admits the allegations contained in paragraph No. 18 of the complaint.

NINTEENTH: Defendant denies that the barge NEW LONDON was a part of a flotilla and the causing of any extensive and irreparable harm to the environment, and except as so denied admits the allegations contained in paragraph No. 19 of the complaint.

ANSWER OF DEFENDANT PITTSTON MARINE TRANSPORT CORPORATION

TWENTIETH: Defendant admits the allegations contained in paragraph No. 20 of the complaint.

TWENTY-FIRST: Defendant admits the allegations contained in paragraph No. 21 of the complaint.

TWENTY-SECOND: Defendant admits the allegations contained in paragraph No. 22 of the complaint.

TWENTY-THIRD: Defendant denies that the penalty is "Civil" in nature and except as so denied admits the allegations contained in paragraph No.23 of the complaint.

TWENTY-FOURTH: Defendant admits the allegations contained in paragraph No. 24 of the complaint.

TWENTY-FIFTH: Defendant denies the allegations contained in paragraph No. 25 of the complaint.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

TWENTY-SIXTH: Defendant repeats and realleges each and every answer asserted in response to paragraphs Nos. 1, 2, 9 through 16, and 18 through 21, with the same force and effect as if fully set forth at length herein in answer to paragraph No. 26 of the complaint.

TWENTY-SEVENTH: Defendant denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph No. 27 of the complaint.

ANSWER OF DEFENDANT PITTSTON MARINE TRANSPORT CORPORATION

TWENTY-EIGHTH: Defendant denies the allegations contained in paragraph No. 28 of the complaint.

TWENTY-NINTH: Defendant, PITTSTON MARINE TRANSPORT CORPORATION, denies that it is responsible for or is in any way liable for the expenses alleged to have been incurred by the plaintiff, and which were set forth in correspondence dated September 16, 1975.

AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION

THIRTIETH: Defendant repeats and realleges each and every answer pleaded in response to paragraphs Nos. 1 through 9, 15, 17 through 21, and 27, with the same force and effect as if fully set forth at length herein in response to paragraph No. 30 of the complaint.

THIRTY-FIRST: Defendant admits that the striking and subsequent discharge of oil into the waters of the Hudson River were at least in part caused by the negligence of the defendants TUG OCEAN PRINCE, INC., RED STAR TOWING AND TRANSPORTATION COMPANY and/or by the negligence of those for whom the said defendants are responsible in answer to paragraph No. 31 of the complaint.

THIRTY-SECOND: Defendant denies that the barge NEW LONDON was a part of any flotilla, and except as so denied, admits the allegations contained in paragraph No. 32 insofar as they relate to the defendants TUG OCEAN PRINCE, INC., and RED STAR TRANSPORTATION AND TOWING COMPANY in answer to paragraph No. 32 of the complaint.

THIRTY-THIRD: Defendant denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph No. 33 of the complaint.

THIRTY-FOURTH: Defendant denies the allegations contained in paragraph No. 34 of the complaint.

AS AND FOR A FIRST SEPARATE AND COMPLETE DEFENSE PLEADED ON BEHALF OF THE DEFENDANT

THIRTY-FIFTH: The Federal Water Pollution Control Act, Title 33 U.S.C.A. Section 1151, et seq., contains the provisions which relate to pollution control.

THIRTY-SIXTH: Section 1161 of said Act, subpart (b) (4) sets forth the mandatory notification procedures required as a result of the discharge of oil into or upon the navigable waters of the United States. Subpart (b)(5) of Section 1161 contains the authority for assessment of a "Civil" penalty to be assessed.

THIRTY-SEVENTH: The defendant PITTSTON MARINE TRANSPORT CORPORATION complied with all of the provisions of Section 1161 subpart (b) (4) and as a result thereof had a fine in the amount of $5000 assessed against it.

THIRTY-EIGHTH: Defendant alleges that the fine proscribed by subpart (b) (5) of Section 1161 although containing the label "Civil" penalty is in effect a criminal penalty, and therefore is a penal and not a remedial provision and as a result thereof abrogates the Constitutional protection afforded by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

AS AND FOR A COUNTERCLAIM BY THE
DEFENDANT PITTSTON MARINE TRANSPORT
CORPORATION AGAINST THE PLAINTIFF
UNITED STATES OF AMERICA
PITTSTON MARINE TRANSPORT CORPORATION
ALLEGES UPON INFORMATION AND BELIEF

THIRTY-NINTH: The United States of America is a sovereign nation which by reason of 46 U.S.C., Section 742 consented to be sued within the admiralty and maritime jurisdiction of this Honorable Court.

FORTIETH: This Court has jurisdiction and the venue is proper by reason of Section 2 of the Suits in

Admiralty Act, 1920, 41 Stat. 525 as amended 74, Stat. 913, 46 U.S.C. Section 742.

FORTY-FIRST: Defendant, PITTSTON MARINE TRANSPORT CORPORATION, is a New York corporation having its principal office and place of business at 380 Madison Avenue, New York, N.Y. 10017, and at all times hereinafter mentioned was an owner and operator of the tank barge NEW LONDON, Official No. 266528.

FORTY-SECOND: Prior to the casualty described herein the tank barge NEW LONDON was tight, staunch, strong and in all respects seaworthy, properly manned and equipped.

FORTY-THIRD; That on or about February 2, 1974, the tank barge NEW LONDON was proceeding in tow of the tug OCEAN PRINCE from Bayonne, New Jersey, via the Hudson River to Kingston, N.Y. At that time the NEW LONDON was carrying a cargo of No. 4 oil. During the course of this voyage the tank barge NEW LONDON was caused to ground in the vicinity of Con Hook Island.

FORTY-FOURTH: In consequence of the aforementioned grounding the defendant PITTSTON MARINE TRANSPORT CORPORATION the tank barge **NEW LONDON**, and its cargo sustained damages presently estimated to be $366,617.22.

FORTY-FIFTH: The aforementioned grounding and the damages resulting therefrom occurred without any fault, negligence or lack of care on the part of the defendant, PITTSTON MARINE TRANSPORT CORPORATION, but were caused by and resulted at least in part by the negligence of the plaintiff in the maintenance of aids to navigation in the vicinity of the grounding existing at the time of the accident; and by the failure of the plaintiff to maintain aids to navigation which would provide adequate warning to vessels in navigation of hazards to navigation which existed in the vicinity of the aforesaid grounding on February 3, 1974.

WHEREFORE, defendant PITTSTON MARINE TRANSPORT CORPORATION prays that the complaint alleged by the plaintiff as against the defendant PITTSTON MARINE TRANSPORT CORPORATION be dismissed with costs, and that judgment be entered in favor of the defendant PITTSTON MARINE TRANSPORT CORPORATION as against the plaintiff UNITED STATES OF AMERICA on its counterclaim for the sum of $366,617.22, together with interest and costs; and for such other and further relief as this Court may deem just in the premises.

McHUGH, HECKMAN, SMITH & LEONARD
Attorneys for Defendant, Pittston
Marine Transport Corporation

By
Maurice F. Beshlian

Office & P.O. Address
80 Pine Street,
New York, N.Y. 10005
Tel. (212) 422-0222

DEPOSITION OF WALTER E. REIMER, TAKEN ON APRIL 27, 1976.

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

In the Matter of the :

Complaint of Tug Ocean Prince, Inc., :
and Red Star Towing & Transportation
Company, Plaintiffs and Third Party :
Plaintiffs, as Owner and Charterer
of the Tug "OCEAN PRINCE" for : 74 Civ. 3358
Exoneration from or Limitation of (Weinfeld)
Liability, :

-against- :

UNITED STATES OF AMERICA, :

Third Party Defendant. :

- x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

PITTSTON MARINE TRANSPORT CORPORATION, : 75 Civ. 5801
RED STAR TOWING & TRANSPORTATION (JMC)
COMPANY, TUG OCEAN PRINCE, INC., :
and
TUG OCEAN PRINCE and barge :
NEW LONDON, in rem,
:
Defendants.
:
- x

29 Broadway,
New York, New York.

April 27, 1976,
at 10:30 a. m.

BE IT REMEMBERED that, pursuant to notices dated March 8, 1976, and October 31, 1975, and on the 27th day of April, 1976, commencing at the hour of 10:30 a. m. thereof, at the offices of Healy & Baillie, Esqs., 29 Broadway, New York, New York, before me, Arthur Mazlin, a Notary Public in and for the County of Kings, State of New York, personally appeared

WALTER E. REIMER,

called as a witness by the Plaintiffs and Third Party Plaintiffs, who, being by me first duly sworn, was thereupon examined and interrogated as hereinafter set forth.

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Appearances:

MESSRS. HEALY & BAILLIE,
Attorneys for Plaintiffs and Third Party Plaintiffs,
29 Broadway,
New York, New York.
BY: WILLIAM F. LOSQUADRO, ESQ., of Counsel.

MESSRS. McHUGH, HECKMAN, SMITH & LEONARD,
Attorneys for Defendant Pittston Marine Transport Corporation,
80 Pine Street,
New York, New York.
BY: MAURICE F. BESHLIAN, ESQ., of Counsel.

Appearances: (Cont'd.)

GILBERT S. FLEISCHER, ESQ.,
Attorney in Charge,
Admiralty & Shipping Section,
Department of Justice,
26 Federal Plaza, Suite 4048,
New York, New York 10007,
Attorney for Third Party Defendant and
Plaintiff United States of America.
BY: JANIS G. SCHULMEISTERS, ESQ.

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IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the respective parties hereto, that the signing, filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that counsel for the Plaintiffs and Third Party Plaintiffs will furnish counsel for Defendant PITTSTON MARINE TRANSPORT CORPORATION and counsel for Third Party Defendant and Plaintiff UNITED STATES OF AMERICA with a copy of the within deposition, without charge.

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MR. LOSQUADRO: I would like to state for the record that the attorneys representing Pittston Marine Corporation, one of the claimants in the limitation proceeding, are not present at this time. Mr. Beshlian of that office advised me earlier this week on the telephone that he had a commitment in court at 9:30 this morning. He asked me, however, to go on with the deposition and he would get here as soon as he possibly could. I told him that I would cover the normal preliminaries with this witness, but when we got to the voyage which is the subject of these actions that I would stop and wait for him to come in, provided it did not get too late.

Would you like to add anything to that, Mr. Schulmeisters?

MR. SCHULMEISTERS: That is fine with me.

MR. LOSQUADRO: All right.

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WALTER E. REIMER, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOSQUADRO:

Q Would you state your name for the record, please.

A Walter E. Reimer.

Q What is your present address, Mr. Reimer?

A 283 Baisden Road, Jacksonville, Florida.

Q How long have you been at that address?

A Oh, about -- now about ten years, I guess.

Q How old are you, sir?

A 45.

Q What is your date of birth?

A 12/23/29.

Q December --

A 23rd.

Q -- 23rd?

A Yes. Now I got to be older than that. I am 46 then.

Q What was that, 19 --

A 1929.

Q -- 29?

A Yes.

Q Are you married, sir?

A Yes.

Q By whom are you presently employed?

A Caribe Tugboat.

Q Caribe Tugboat?

A Caribe.

Q Where are they stationed; where are their offices located?

A Jacksonville and also -- well, their office is in Jacksonville.

Q Are they affiliated with a tugboat operation or another tugboat company?

A Yes, they are -- they are, yes.

Q With what company?

A Well, it's Crowley Maritime out of Seattle.

Q C-r-o-w-l-e-y?

A Yes.

Q In what capacity are you presently employed by Caribe?

A Captain.

Q Of a particular vessel?

A Right now the CAVALIER.

Q Captain of the -- Is it a tugboat?

A Yes.

Q -- CAVALIER?

A That's right.

Q You said it was a tugboat. Could you describe it for us?

A It's 137 foot long, 10,000 horsepower.

Q A 10,000 horsepower engine?

A That's right.

Q Single engine?

A Twin screw.

Q Twin screw?

A Yes.

Q Is it a harbor tug or an ocean-going tug?

A Ocean-going vessel.

Q How many members in its crew; how many crew members?

A We have -- well, let me see: there would be eight.

Q Eight?

A Yes.

Q How many pilothouse men or navigators of that eight?

A Three.

Q What watches do you stand?

A I stand the 8 to 12 watch.

Q A four-hour watch?

A Yes, four on and eight off.

Q Do you stand two four hour watches a day?

A Right.

Q Of the three pilothouse men, who is the senior man on that boat?

A Oh, I would be.

Q Are you the senior captain of that crew?

A Yes, right.

Q How long have you been the captain on the tugboat CAVALIER?

A Since it came out. It's about two and a half months old.

Q Since it came out of the shipyard?

A Since -- it's brand new.

Q Did you take it out of the shipyard?

A I took it from Jacksonville on its maiden voyage.

Q Where is it presently trading?

A Still running between Jacksonville and Puerto Rico.

Q And Puerto Rico?

A Right.

Q What type of trading is she engaged in?

A Container -- container barge. Double deck container barge. It carries trailers. In other words, like these roll-on and roll-off; like 180 trailers it carries.

Q 180 trailers?

A Two decks.

Q On a double deck tow?

A A double deck tow, right.

And they unload them in five hours, and re-load them in five hours in Puerto Rico. It's fantastic. Up and down them ramps. You wouldn't believe it.

Q Prior to joining the CAVALIER were you employed on any other tug by Caribe?

A Yes, I was -- I was captain on board the PIONEER.

Q The PIONEER?

A That's right.

Q Is that also a tugboat?

A Yes.

Q Is it similar to the CAVALIER?

A Identical with it.

Q Are they sister tugs?

A Right.

Q Were you the senior captain on that tug also?

A Right. That I took right from the shipyard too.

Q How long were you captain on board the PIONEER prior to your taking over command of the CAVALIER?

A She was about -- oh, she was about six months old at the time.

Q How many years were you on the PIONEER?

A Well, that was about it. It was brand new; I had it for six months, and then they put somebody else on it, and they put me on the CAVALIER, another new one. So there was two new ones in about six months, six or eight months.

Q How long have you been employed by Caribe?

A It was a year December 4th.

MR. SCHULMEISTERS: That is 1975; is that right?

MR. LOSQUADRO: Yes.

THE WITNESS: Yes.

Q Do you hold any licenses issued by the United States Coast Guard?

A Yes, I do.

Q Do you have them with you today?

A Yes, I do.

Q May I have it?

A (Handing document to Mr. Losquadro.)

MR. LOSQUADRO: The witness has handed me a document entitled "License." It is issued to Walter Ernest Reimer. It certifies that Mr. Reimer has been duly examined and found competent to serve as operator of uninspected towing vessels upon the oceans, not more than 200 miles offshore, and the inland waterways of the United States, not including the western rivers and the Great Lakes. The license will expire on June 12, 1978.

Let the record show that I have returned the original to Mr. Reimer. Would you mark this as Reimer Exhibit 1.

(License issued to Walter Ernest Reimer, as above described, was marked Reimer Exhibit 1 for

Identification.)

MR. LOSQUADRO: Let the record show that Maurice Beshlian of the firm of McHugh, Heckman, Smith & Leonard, has just arrived at the deposition. Mr. Beshlian represents the claimant in the limitation proceeding, Pittston Marine Transport Corporation. We briefly reviewed with Mr. Beshlian the testimony which has transpired prior to his arrival.

Q I don't recall, have I asked you, Mr. Reimer, how long you have been employed by Caribe Tugboats?

A I thought we went through that.

Q Did we?

A Yes.

Q What was your answer again?

A A year December 4th.

Q A year December --

A In other words, over a year. It was a year this past December.

Q One year this past December 1975; is that right?

A That's right. Yes, yes.

Q By whom were you employed prior to working for Caribe Tugboats?

A Red Star, I guess.

Q Red Star Towing & Transportation?

A Yes.

Q Where are they located?

A New York.

Q In what capacity were you employed by Red Star?

A I was a mate and relief captain and captain.

Q On tugboats?

A Right.

Q Any particular tugboat?

A Well, I served some time on the CRUSADER and then the rest was on the OCEAN PRINCE.

Q On the tugboat OCEAN PRINCE?

A Right.

Q When did you begin working for Red Star Towing & Transportation, if you remember?

A No, I would be wrong to say. I couldn't recall just when I started working for them.

Q Do you recall approximately how many years you worked for Red Star?

A It must have been about a year and a half, I guess, all together.

Q That was principally on the tugboat OCEAN PRINCE?

A Yes, with the one exception of --

Q Of the CRUSADER?

A -- of the CRUSADER, right.

Q Were you ever employed by any tugboat operators other than Red Star and Caribe Tugboats?

A Yes, I was. I was employed by Interstate in between -- in between --

Q Just prior to Red Star?

A Well, prior to Red Star I was -- I worked for Interstate in between trips. Our trips are rather long, and when you took time off it consisted of like two and a half months or something like that. So it would --

Q Are you saying during time off while employed by Red Star you --

A Not by Red Star. This is before Red Star. We already -- this is before I went with Red Star.

Q All right.

A I worked part time for Interstate.

Q Where are they located?

A Well, at that time -- well, they still are -- at Philadelphia. But I was employed out of the Tampa office. They at the time had an office in Tampa. I don't know whether they have it there or not any longer.

Q In what capacity were you employed by Interstate?

A I was mate on the VOYAGER and on the INTREPID.

Q The VOYAGER and the INTREPID?

A Yes.

Q Are these tugboats?

A Yes.

Q Whom else did you work for by way of tugboats?

A Gulf Atlantic Towing Company.

Q Where are they located?

A Jacksonville.

Q Were you employed on tugs for them?

A Yes, I was.

Q In what capacity?

A Relief captain and captain.

Q Relief captain and captain?

A Yes.

Q Did you have any other sea experience?

A Yes. I was on small tankers up here around New York with Poling Brothers; and also deep sea experience with Socony Vacuum Oil Company. Now it's Mobil Oil but years ago it was Socony Vacuum Oil.

Q While you were employed by Socony Vacuum and Poling were you employed in a navigating capacity?

A No, I was working on deck as A. B. and bos'n, and so forth.

Q By whom were you employed when you first began steering tugboats?

A Gulf Atlantic Towing.

MR. SCHULMEISTERS: Could we have the approximate year on that?

Q Do you have an approximate year?

A Oh, it must have been nine years ago, nine or ten years ago.

Q When you began steering tugboats did you ever go back to any other capacity on board these harbor vessels or seagoing vessels?

A No.

Q I would like you to describe the OCEAN PRINCE for me as best you can recall it. First, do you recall her dimensions, and if not specifically, do you recall her approximate dimensions?

A Well, I would have to be approximate because, as

I say -- I guess she was about 90 feet or something like that.

Q Approximately 90 feet long?

A Yes, approximately. She had 1800 horsepower, I know that. It was a Fairbank-Morris.

Q Pardon?

A Fairbank-Morris.

Q Is that the engine?

A That's the engine. Opposite pistons they call it. O. P.'s they call it.

Q Opposite piston engine?

A Yes.

Q Is she a single screw or double screw vessel?

A Single screw.

Q Is she a single ruddered vessel?

A That's right.

Q Is she equipped with flanking rudders or any devices like that?

A No.

Q I would like you to describe the navigational equipment on board. Was the OCEAN PRINCE when you were on it equipped with radar?

A Yes, it was.

Q Do you recall the make and model?

A It was a Decca. I don't remember what the model number was but it was a good radar. Decca makes good radar.

Q Was it equipped with a gyrocompass?

A Yes, it was.

Q Was it also equipped with a magnetic compass?

A Yes, it was.

Q Captain Reimer, are you familiar with a volume, a book known as the Coast Guard Light List?

A Yes.

Q Are you also familiar with a book known as the Coast Pilot?

A Right.

Q Published by the U. S. Department of Commerce?

A Yes.

Q Were you serving on board the OCEAN PRINCE on February 2nd and February 3, 1974?

A Yes, I was.

Q In what capacity?

A I was mate on there.

Q Do you know if the tug OCEAN PRINCE had on board on those days the Coast Pilot?

A Well, I'm sure it was on there, yes.

Q Do you know if it had on board a volume known as the Coast Guard Light List?

A I'm sure it was.

Q Can you identify this document (handing to witness)?

A Can I identify it?

Q Yes.

A Yes, it's the Light List, Volume I, Atlantic Coast.

Q Is there a date on that?

A Yes, 1972.

MR. LOSQUADRO: Off the record.

(Discussion off the record.)

MR. LOSQUADRO: Could you please mark this as Reimer Exhibit 2 for Identification.

(Coast Guard Light List for 1972, Volume I, Atlantic Coast, was marked Reimer Exhibit 2 for Identification.)

Q Mr. Reimer, I am going to show you another document consisting of a book, a volume; can you identify what it is?

A It's the Coast Pilot No. 2, Eighth Edition, 1973, Atlantic Coast, Cape Cod to Sandy Hook.

Q On February 2 and 3, 1974, did the OCEAN PRINCE either have that document or a similar document on board?

A I would say yes.

Q Do you know if that particular document was the one on board on those days?

A I could not say.

MR. LOSQUADRO: Would you mark this as Reimer Exhibit 3 for Identification, please.

(Volume headed Coast Pilot No. 2, Eighth Edition 1973, Atlantic Coast, Cape Cod to Sandy Hook, was marked Reimer Exhibit 3 for Identification.)

MR. LOSQUADRO: I would like to state for the record that we received from the attorney for the Government a request for the production of documents, including the copy of the Coast Pilot and the Light List which were on board the vessel, the tug OCEAN PRINCE on February 2 and 3, 1974. Pursuant to that request Red Star dispatched a man to the tug this year to take off from the boat the tug's copies of those documents. No one knows for certain that these particular documents were the ones that were on board on those days, but they believe that to be so.

MR. SCHULMEISTERS: Fine.

Q From where is the tug OCEAN PRINCE navigated, from what part of that tug?

A The wheelhouse.

Q From the wheelhouse?

A Yes.

Q Where is the wheelhouse located on the tug in relation to the bow or the stern?

A Oh, about 20 -- say 20 feet from the -- 20 feet from the bow; aft, in other words.

Q About 20 feet from the bow of thetug?

A Right. I would say approximately 20 feet.

Q Is it equipped with windows?

A Oh, yes. We have good visibility.

Q Do you remember the approximate height of eye for a person standing in the pilothouse, the approximate height of eye above the waterline in the tug OCEAN PRINCE?

A Well, I would -- let me see. I would say about

20 feet also. About 20 -- 18 to 20 feet, offhand.

Q 18 to 20 feet height of eye above the waterline?

A Oh, yes, yes.

Q Is it a pilothouse controlled boat?

A Yes, it is.

Q Could you describe what is meant by a pilothouse controlled boat?

A Well, you got -- in other words, you don't have no telegraph. You got your controls up there that controls your speed, and you can slow the vessel down or speed it up or stop it or whatever.

Q Directly from the pilothouse?

A That's right.

Q In other words, you have direct pilothouse throttles; is that correct?

A That's right.

Q You don't have a man -- if I may lead him for a moment just to get him through this -- you don't have a man in the engine room who is receiving orders from the pilothouse; you do it directly from the engine?

A Directly from the pilothouse to the engine.

Q Is this a fully automated boat?

A Yes, it was.

Q What does that mean?

A Well, you got alarms that you can -- if you have any low oil pressure or any malfunction of that type, an alarm will go off and --

Q In the pilothouse?

A That's right. And you also can start it and stop it from the pilothouse, as well as -- as well as everything else. Pre-lube -- you can pre-lube the engine and start it up, everything.

Q So you can start and stop the engines directly from the pilothouse --

A That's right.

Q -- with a switch is what you are saying?

A Right, a button.

Q On February 2 and 3, 1974, how many crew members were serving on board the OCEAN PRINCE?

A Six.

Q Could you describe their titles?

A Well, there was -- the names and the titles or just the --

Q The names if you can remember them.

A Well, we had a captain, a mate, two deckhands, A. B.'s, both of them, and one cook and one engineer.

Q A total of six?

A Six, right.

Q Do you remember the names of the pilothouse men?

A John Kiernan was one, and then I was - myself, Walt Reimer, the other.

Q Did the crew stand watches?

A Yes, we worked six and six.

Q Six hours on and six hours off?

A That's right.

Q And you alternated in the course of a 24-hour day?

A Alternated? I don't understand.

Q For instance, did you and Mr. Kiernan alternate six-hour watches in the course of a 24-hour day?

A Well, we relieved one another. I mean that was --

Q Each six hours?

A Yes. In other words, I stood the 12 to 6 and he stood the 6 to 12.

Q You stood the watches then from midnight to 6 in the morning --

A Right.

Q -- and from noontime --

A To 6 at night.

Q -- to 6 at night?

A Yes.

Q In addition to Mr. Kiernan and yourself, do you remember the names of the two deckhands?

A Frank McCloud was one and Mickey Hebert, I believe.

Q Hebert or Herbert?

A Either way, I guess.

Q Do you remember the name of the engineer?

A William Fowler.

Q Do you remember the name of the cook?

A John McNillan.

Q Which deckhand was on your watch?

A Mickey Hebert.

Q Hebert or Herbert?

A Yes.

Q Then I assume Mr. McCloud was John Kiernan's deckhand.

A Right.

Q Captain Reimer, I am going to show you a document which was marked at a prior deposition by John Kiernan. Can you identify this document?

A It's a log book, a rough log.

Q For what, the tug OCEAN PRINCE?

A The tug OCEAN PRINCE, right.

Q What dates does it cover?

A From January 1, 1974, to June 5, 1974.

Q Who makes the entries in that book?

A Whoever is on watch fills in his hours and his time.

Q The captain or mate?

A Yes.

Q Is that what you are saying?

A The captain or mate, right.

Q Is that document kept in the regular course of the tug's business?

A Oh, yes, yes, it is.

Q Is that document kept on board the tug at all times, as far as you know?

A Right, yes.

MR. LOSQUADRO: This document was removed from the tugboat at my request pursuant to a demand for the production of documents served on us by the Government. Let the record show that this log book has already been marked as Government's Exhibit 1 at the prior deposition of John Kiernan. We will not re-mark it.

Q Were you on board the tugboat on February 2, 1974, when it commenced the voyage from Bayonne, New Jersey, to Kingston, New York?

A Yes.

Q What time that day - and you can refresh your recollection by looking at the log book - did the tugboat OCEAN PRINCE arrive at Bayonne, New Jersey?

A (After perusing log book) Well, it was -- it wasn't Bayonne; it was Con Hook that we loaded.

Q To what terminal or dock facilities did the tug OCEAN PRINCE proceed that day?

A Well, Exxon --

Q Exxon?

A Yes.

Q Do you know what city there that terminal is located in?

A I guess it is Bayonne.

Q Bayonne, New Jersey?

A Bayonne, yes.

Q You said Exxon-Con Hook.

A That's right.

Q Is that in the vicinity of the Constable Hook Range here in New York Harbor?

A That's right.

Q Not to be confused with the Con Hook over there.

A Yes, yes. I got the wrong -- I got the wrong --

Q What time did the tug arrive at Exxon Con Hook, as it is known, I understand?

A We arrived there -- oh, it must have been 19 -- well, let's see, we left -- we arrived there at 1850.

Q 1850 hours on February 2nd?

A Yes, 1850.

Q Who was on watch on the tug OCEAN PRINCE at that time?

A 1850. It had to be -- it had to be the captain, John Kiernan.

Q John Kiernan?

A That's right, 1850.

Q What were the tug's orders?

A Pick up the barge NEW LONDON and --

Q And do what with it?

A Bring it up to Kingston.

Q Kingston, New York?

A Yes.

Q Was the barge NEW LONDON at the Exxon berth when you arrived there?

A It must have been. Yes, it must have been, because we was up at Bushey's Yard waiting for orders, so it must have been over there. It must have been at the dock already before.

MR. SCHULMEISTERS: For the record, the witness is referring to the log book.

MR. LOSQUADRO: To the log book. He has the log book in front of him.

MR. SCHULMEISTERS: Government's Exhibit 1.

Q Was the barge ready to sale, as far as you recall?

A Well, we left at 1915. We sailed with the barge.

Q How did the tug OCEAN PRINCE, if you recall, take the barge NEW LONDON in tow?

A We made up in the notch.

Q What do you mean by that?

A Well, the notch is an indentation in the -- where you put your bow, your tug in there. And it's about I would say maybe -- on that particular barge maybe four or five foot deep, maybe six.

Q The notch that you are speaking of, is that on the stern of the barge NEW LONDON?

A Right.

Q Does the tug OCEAN PRINCE place its bow into that notch?

A Right.

Q So that you would have the barge in forward tow, in other words, pushing it?

A Pushing the barge, right.

Q Do you recall what lines or how many lines were used to secure the tug to the barge?

A Well, we had pushing cables first off, and then we put --

Q Describe the pushing cables and where they ran from the barge to the tug.

A Well, they run from the quarter of the tug to the bitts, on the after bitts on the barge.

Q From the quarter side bitts on the tug; is that what you mean?

A On the tug, yes, right.

Q On the port and starboard side?

A Right.

Q To the stern port and starboard bitts on the barge; is that correct?

A That's right.

Q Were any other lines used?

A Yes, we always doubled up several, what we call soft lines and put --

Q Synthetic lines; is that it?

A Yes.

Q Were the pushing lines steel or were they synthetic?

A No, they were st -- wire.

Q Wire steel cable?

A Wire, yes.

Q At a prior deposition, Mr. Reimer, at which John Kiernan testified, he was asked during the examination to make a diagram showing how the tug OCEAN PRINCE was made up to the barge NEW LONDON, and he did so. The diagram was marked as Government's Exhibit 3 for Identification. Do you agree with how the makeup of the vessels were done that day as shown on that diagram?

A Yes.

MR. SCHULMEISTERS: For the record, the witness has been handed Government's Exhibit 3.

A Yes, this was fine. Yes.

Q Were you down below at this time or were you up and about? I know you were already off watch.

A When we was making up?

Q Yes.

A I was up and about; helping out, yes.

Q Did you stay up and about after the vessels departed from Bayonne, New Jersey?

A No, I went down. I went below.

Q You went below?

A Yes.

Q To where and what did you do?

A Until where?

Q Where did you go to when you went below?

A I probably laid down in my room.

Q Did you go to sleep?

A I imagine I did, yes. I don't recall.

Q As best you can recall, can you describe the barge NEW LONDON. First, what type of barge was it?

A It was an oil barge.

Q Was it loaded?

A Yes, it was.

Q Do you recall its approximate dimensions?

A Well, it was -- I really don't know. It must have been about two hundred -- over 250 feet long, maybe closer to 300. And it was rather narrow. I don't believe it was much over 45 feet wide, if it was that.

Q Do you recall how much it was drawing, how much draft?

A (No response.)

Q If you don't, just say so.

Q I don't recall. It was -- I don't recall offhand.

Q Do you have any recollection of the barge's approximate freeboard? That is the distance from the waterline to the deck.

A Yes, it must have had a couple of foot of freeboard anyway, yes.

Q Do you recall what the deep draft of the OCEAN PRINCE was?

A 16 feet would have been almost maximum, I'm sure.

Q Would that be the maximum draft for that boat?

A Yes.

Q Do you know if the OCEAN PRINCE was drawing more or less than the barge NEW LONDON?

A I am sure it was drawing more.

Q The OCEAN PRINCE was drawing more?

A Yes.

Q Does the barge NEW LONDON have a house or cabin or crew's quarters on deck?

A It has crew's quarters, yes.

Q Do you recall how high above the deck the roof of the cabin extended on the barge?

A Oh, I wouldn't say any more than three feet. It's -- I wouldn't say -- it wouldn't extend any more than three feet. It's kind of a step-down situation, where you go down into the after -- the after part of the barge.

Q Is it a partially sunk cabin?

A Yes. That's -- that would be --

Q Is that what you mean?

A Yes, that would be it.

MR. BESHLIAN: Off the record.

(Discussion off the record.)

Q Was it a manned barge?

A Yes, it was.

Q How many men were on board, do you remember?

A Two tanker men.

Q Were they Red Star personnel or were they Pittston personnel?

A They were Pittston personnel, right.

Q Did I ask you yet, and if I didn't: What time did the tug and barge leave Exxon-Con Hook?

A We left at 1915.

Q Did there come a time when you came up from your quarters up to the pilothouse of the tug again?

A I didn't understand the question.

Q Let me repeat it: After the tug and barge got underway, I believe you said you went below to your quarters.

A Right, right.

Q Did there come a time when you came back up on deck of the tug or back up to the pilothouse?

A Nothing that I can particularly say except to relieve the man at 11:30.

Q At 11:30 that --

A That same night.

Q -- that same night, February 2nd?

A Right.

Q Did I understand you to say you came up to relieve Captain Kiernan?

A Right.

Q Do you recall where the tug and barge were at that time?

A At Havestraw, Havestraw Bay.

Q Did Captain Kiernan go below immediately or did he stay with you in the pilothouse after you assumed your watch?

A Well, we chatted a little while.

Q Can you describe the weather at that time in Havestraw Bay?

A It was a light snow falling.

Q Do you recall the visibility?

A It was fair. Fair.

Q What do you mean by fair?

A Well, I mean -- what could you say? I guess you had a couple of miles, anyway.

Q A couple of miles?

A Yes.

Q This was in the winter time. Was there any ice in the water in Havestraw Bay?

A Yes, there was.

Q Was it solid ice or drift ice; can you describe it as best you can?

A Well, it was some rather large pieces of ice. It was I would say maybe six or eight inches thick in areas.

Q Was it drift ice?

A There was some of that too. There was drift ice. There was some drift ice.

MR. SCHULMEISTERS: Explain what you mean by drift ice.

Q Was the ice moving with the current or was it stationary? Was the ice solid across from shoreline to shoreline?

A No, there were broken spots in it.

Q Was the ice flowing with the current?

A Well, I wouldn't -- it would be really hard to say. I don't think it was. I mean to a certain degree I believe probably some pieces were floating around; others weren't. I mean it was just one of those situations where there was a lot of broken -- there was broken ice there.

Q When you said 11:30, that is 11:30 p. m., or 23 --

A 2330.

Q -- or 2330 hours?

A That's right.

Q Was the radar on when you arrived in the pilothouse?

A Right.

Q Was it?

A Yes, it was on.

Q Do you recall the range it was on?

A I don't recall offhand now.

Q Did you change the range at all at any time that night or the next morning after you came on watch?

A No.

Q Do you know what the minimum range is, if you know for certain? Do you know what the minimum range is on that radar?

A No, I don't. Offhand I couldn't say.

Q Well, would it be --

A I would be -- What did you say?

Q Would it be less than a mile?

A Oh, yes.

Q Do you recall what the maximum range was on that radar set, and if you don't recall specifically, just say so?

A I would -- I suspect it was a 24-mile range on there, but I'm not sure. I'm not certain of that either. I mean it has been quite a while ago. They usually on those particular -- that's about right, a 24-mile range.

Q Was the tug OCEAN PRINCE equipped with a searchlight?

A Yes, it was.

Q Was it working that night?

A Yes, it was.

Q Where is the searchlight located?

A Above the wheelhouse.

Q How do you operate it?

A Well, there is a handle in there and you can operate it.

Q Inside the pilothouse?

A Yes, it is, right.

Q Can you shine the light from side to side in a horizontal plane?

A Right.

Q Can you shine it up and down also?

A Yes, you can.

Q Do you recall its power in watts, what its wattage was?

A No, I wouldn't -- I don't recall what it was. It was a good searchlight though.

Q Is the radar on this tugboat equipped with -- I am not sure what you call it, but a reflector cover to block glare as you look at the screen?

A You got the --

Q Does anybody know the name for that?

A The hood, in other words.

Q The hood, yes.

A Yes, it had --

Q Was one on board the OCEAN PRINCE?

A Yes, we had one on there.

Q Is that hood removed at night?

A Yes, it is.

Q Was it on or off that night when you came on watch?

A I'm sure it was off, because we always take it off at night.

Q When you do that can you look directly at the screen then, the radar screen?

A Oh, yes. Yes.

Q I believe you already testified that the vessel was equipped with a gyrocompass; do you recall the make?

A It was a Sperry. The model number I don't recall either.

Q Are you or were you aware of any gyro error in the gyrocompass?

A There wasn't any.

Q How do you know that?

A Well, you checked on ranges and so forth as we go along.

Q From time to time did you check for gyro error in the compass?

A Oh, yes. I checked it out quite frequently.

Q And were you aware from that of any gyro error?

A Yes. There wasn't any gyro error.

Q There wasn't any gyro error?

A No.

Q The body of water you were on at this time was the Hudson River; is that correct?

A That's right.

Q Did you have a navigation chart on board for the area that you were navigating?

A Yes.

Q Where was it?

A It was in the wheelhouse.

Q Was it out and in use or was it put away?

A No, it was out and in use.

Q Was it out throughout the entire --

MR. SCHULMEISTERS: You are getting too leading there. Please watch that.

Q Was it out and in use or was it put away?

A It was out and in use.

Q Was it kept out during the entire voyage or had it been put away at any particular time?

A No, it was out.

Q Where in the pilothouse was it located?

A On a chart table there.

Q Where is that?

A That's on the after bulkhead, on that particular boat on the starboard side.

MR. SCHULMEISTERS: The chart table on the starboard side after bulkhead?

THE WITNESS: Right.

MR. LOSQUADRO: Off the record.

(Discussion off the record.)

MR. LOSQUADRO: Mr. Reporter, also pursuant to a notice to produce documents served by the United States Government we arranged to have the chart on board the tug OCEAN PRINCE covering the area of the Hudson River from New York to Wappinger Creek produced. The document I have in front of me, which is Chart No. 282, Ninth Edition, November 22, 1969, corrected through Notice to Mariners No. 47, 1969, will be marked.

This particular chart was removed from the tugboat. Again nobody knows if this particular chart was the one on board on that night, but we assume it was.

MR. SCHULMEISTERS: Can we mark that as Exhibit 4?

MR. LOSQUADRO: Can we? He didn't identify it himself, but can we adopt what I just said?

MR. BESHLIAN: That is all right with me, surely.

MR. LOSQUADRO: All right?

MR. SCHULMEISTERS: All right.

MR. LOSQUADRO: Do you disagree with what I just said?

THE WITNESS: No, I don't.

MR. LOSQUADRO: All right, let us mark this.

(Document headed "Chart No. 282, Ninth Edition of November 22, 1969, Corrected through Notice to Mariners No. 47, 1969," was marked Reimer Exhibit 4 for Identification.)

BY MR. LOSQUADRO:

Q Captain Reimer, when you were last here you testified at a discovery deposition which had been noticed by the attorney for Pittston Marine Transport Corporation. During the course of that deposition you referred to a chart which you marked up and which was marked for identification at that deposition as Defendants' Exhibit 2 for Identification, May 6, 1975. We are going to re-use that chart for your questioning today. I don't see the need to re-mark it right now.

MR. SCHULMEISTERS: Fine.

Q In referring to this chart, Captain Reimer, do you remember the approximate point - and if you don't remember, say so - that you relieved Captain Kiernan?

THE WITNESS: Off the record.

(Discussion off the record.)

Q Captain Reimer, do you remember - and if you don't, say so - the point where you relieved Captain Kiernan at approximately 11:30 at night on February 2nd? You testified it was in Havestraw Bay.

A Give or take somewhere around there. I really couldn't remember right offhand.

Q You don't remember the exact point?

A No, I don't.

Q Did there come a time when he went below or did he remain in the pilothouse with you for the rest of the voyage?

A No, he went below.

Q Do you remember how long he stayed up with you in the pilothouse?

A I wouldn't be able to recall. You know, you pass the time.

Q Do you remember geographically on this chart where he went below, and if you don't, just say so?

A No, I don't.

Q Let us ask you this: Did he remain with you until you reached the Bear Mountain Bridge?

A No.

Q He was below by that time?

A Yes, he was below. Yes, he was.

Q Did Captain Kiernan mention anything to you about any malfunctioning of the radar or gyrocompass?

A No, he didn't.

Q Did he mention anything to you about any malfunctioning of the engines or the steering on the tug OCEAN PRINCE?

A No, he didn't

Q While he was together with you in the pilothouse prior to going below -- this is after you came on watch -- was there any conversation between you?

A There was, but to what nature I wouldn't really -- I don't know to what. He probably asked -- just small talk, let me put it that way.

Q Small talk?

A Yes.

Q What engine speed was the throttle of the tug set on when you assumed the watch?

A I imagine maximum speed. What r.p.m.'s again I couldn't recall.

Q Was the throttle on full ahead or half ahead?

A Yes, I would say full ahead.

Q Full ahead?

A Yes.

Q Did you keep it on full ahead?

A I did, up until I was looking for that buoy.

Q Prior to Bear Mountain Bridge did you keep the engine on full ahead?

A Yes, I did.

Q Do you recall the stage of the tide; was it slack, ebbing or flowing?

A It was ebb tide.

Q Were you stemming the tide or going into the tide?

A Stemming.

Q Does that mean going into the tide?

A Right.

Q Do you have an estimation on the speed the tug and barge were making through the water; not over the bottom but through the water?

A Probably -- oh, I guess it must have been about seven knots, seven or eight knots.

Q Seven or eight knots?

A Yes. Maybe not even that. I would say around that, seven or eight knots. I just can't recall offhand.

Q Were you encountering any vessel traffic in the area?

A No, I hadn't seen a thing.

Q Is this tug equipped with a VHF radio?

A Oh, yes.

Q Was it on at this time?

A Oh, yes.

Q What stations were you monitoring?

A 16 and 13.

Q Did you hear any vessel traffic?

A No.

Q Aside from not seeing any, did you hear any on the radio?

A No, no. It was a real quiet night. Too quiet, I should say.

Q Do you recall what your speed would have been over the bottom in view of the fact that you were stemming the tide?

A Probably just a little bit better, I guess. Maybe about -- maybe around -- no, I wouldn't recall. I just don't recall how fast we were going. About seven, probably eight knots.

Q Were you steering by course or were you steering by seaman's eye?

MR. SCHULMEISTERS: Objection. Why don't you ask him how he was steering. You are leading him too much now.

Q How were you steering the tugboat?

A We -- steering by -- by seaman's eye, I guess.

Q Let me ask you this: Did you set any courses at all during this voyage?

A No. No. Not on that.

Q Captain, was the visibility the same after you came out of Havestraw Bay heading north as when you came on watch?

A Was it the same?

Q Yes.

A Yes. There were snow flurries. There were slight -- you know, flurries, gusting here and there off there.

Q Continuing up to Bear Mountain Bridge, from Havestraw Bay to Bear Mountain Bridge, were you able to see the shorelines visually?

A Yes, you can see them fairly well.

Q Were you from time to time referring to your radar screen?

A Oh, yes.

MR. SCHULMEISTERS: Objection. Please ask him what he did. Don't lead him.

MR. LOSQUADRO: I will let it stand.

Q Did you pass buoys from time to time while proceeding up the river?

A Yes, yes.

Q Captain, on the north side of Havestraw Bay, on the north end of Havestraw Bay there appear to be two lights at a point called Verplanck Point; could you tell me what they are?

A That's a range, range lights.

Q They are range lights?

A Right.

Q Were they lit that night, on February 2nd or February 3rd, at whatever time we were at this point?

A I'm sure they were, yes.

Q Do you recall being on that range?

A (No response.)

Q Do you recall steering on that range?

A I don't recall. I don't recall offhand.

Q Proceeding further north from Verplanck Point, on this Chart 282, Eleventh Edition dated November 3, 1973, the chart shows a buoy on the port side of the channel heading northbound, or on the west side. Do you recall seeing that buoy? If you don't recall that specific one, say so.

A I don't recall that particular one.

Q Heading further north there appears to be an aid to navigation on the north side of Iona Island on the west side of the channel; do you recall seeing that aid?

A I am sure I did.

Q Did there come a time when you reached Bear Mountain Bridge?

A I didn't understand the question.

Q Did there come a time when you reached Bear Mountain Bridge?

A Did there come a time?

Q Did there come a time when the tug and barge reached Bear Mountain Bridge?

A Yes.

Q You reached it?

A Yes, yes.

Q Did you encounter any difficulty with the navigation of your tug and tow prior to that time?

A No.

Q Was your radar still on?

A Yes, it was.

Q Had you up to that point been referring to it from time to time?

A Right.

Q On this chart there was marked at the prior deposition an X approximately --

MR. SCHULMEISTERS: Let me hand you a pair of dividers.

MR. LOSQUADRO: Do you have dividers?

MR. SCHULMEISTERS: Yes. Here you are (handing to Mr. Losquadro).

MR. LOSQUADRO: Thank you.

MR. SCHULMEISTERS: Let the record show that counsel is taking measurements on chart, Defendants' Exhibit 3.

MR. LOSQUADRO: Yes. I am taking the measurements from this X, marked in red on the chart, to the center of the Bear Mountain Bridge. Agreed?

MR. SCHULMEISTERS: Yes.

MR. LOSQUADRO: It shows just short of a mile; all right?

MR. SCHULMEISTERS: Yes.

BY MR. LOSQUADRO:

Q The X that I am referring to appears to be slightly less than a mile north of the Bear Mountain Bridge. Drawn to that X on a line are the following words, "Started looking for C. 25."

A Yes.

Q I assume the "C" means Can No. 25?

A Yes.

Q Do you recall writing that on that chart at your prior deposition?

A That's my writing. I can recognize that.

Q What did you mean by that?

A Well, I didn't pick up the -- I didn't pick up the can buoy.

Q Which can buoy?

A 25.

Q Could you describe where the 25 can buoy is or point to it?

A Right here (indicating).

Q That is just south of what is known as Con Hook --

A Con Hook Island.

Q -- Island? It is called Con Hook here, but it is known as Con Hook Island.

MR. LOSQUADRO: Are we agreed to that, gentlemen?

MR. SCHULMEISTERS: Yes.

MR. BESHLIAN: Yes.

Q What do you mean you couldn't pick it up; did you look for it visually?

A I looked for it visually and in radar and with the searchlight and everything I possibly could do.

Q Was the tug still proceeding at full speed ahead at this time?

A No, I reduced the speed to half and less.

Q Do you recall at what point you did that?

A Probably this mile above Bear Mountain Bridge, I imagine.

Q A mile at that point?

A Yes.

Q Why did you do that; why did you reduce engine speed?

A I was looking for that can buoy and I couldn't find it. I slowed down purposely.

Q Do you know what the purpose of that particular can buoy is?

A Yes. Yes, I do. That's -- there is a rock there, and I guess -- whatever it says here. It must be about seven to ten foot of water there on the particular rock.

Q It marks a rock?

A Yes.

Q About seven or ten feet - you were trying to read something?

A I can't see the -- this here (indicating).

Q It marks a rock approximately seven to ten feet below the waterline?

A Yes, below the --

Q Is that below the low waterline or the high waterline?

A That would be below the low waterline.

Q Did you make any other engine changes other than reducing the tug's engine to half ahead or probably less?

A I slowed down probably a little more as I realized I couldn't pick up that can buoy.

Q Could you estimate the tug and barge's speed through the water and over the bottom after the first engine speed reduction?

A No, I wouldn't be able to estimate that.

Well, it would be less than what -- half of -- you know, of what we originally had. We were doing seven knots or eight knots. And it would probably be down a couple of knots anyway. It would be really hard to say unless I am --

Q Were you able to sight that buoy?

A Was I able to sight it?

Q Yes.

A No, I never seen it.

Q Did you continue to look for it?

A Yes.

Q Was the weather still the same; that is were you still experiencing light snow or had the snow intensified or decreased?

A Well, it was -- it was --

MR. SCHULMEISTERS: I say again you are leading, but go ahead.

A It was gusty. The flurries were increasing. You know, it wasn't a constant.

Q Do you recall the visibility at this point?

A No, I don't.

Q Do you recall any change in visibility from what it had been earlier?

A No, I wouldn't say.

Q Were you able to visually sight the east shoreline and the west shoreline?

A Yes. I would say yes.

Q What happened after that in your own words?

A Well, the barge struck this rock.

Q What did you feel and how did you know that?

A Well, I seen it -- felt it strike the rock.

Q You felt something?

A Yes.

Q Can you describe as best you can what you felt?

A Well, it was a bumping sensation.

Q Did either the tug or barge show any signs of having struck anything; by that I mean did either of the vessels list?

A Well, it had a little bit of port list in it.

Q Say that again.

A It had a little -- after we struck the rock and it come around it developed a port list.

Q Prior to coming around, at the moment you felt the contact that you described, did either the tug or barge list one way or the other; did it do anything that you could see?

A Well, when it struck the rock you seen the bumping sensation. Probably she hit that rock and slid off of it. Just hit that rock and slid off of it.

Q What rock are you speaking of?

A This one where this can buoy was supposed to have been located.

Q By "this can buoy," you mean the 25 can buoy?

A Right, yes.

Q Prior to feeling that contact did you at any time see that 25 can buoy?

A No.

Q Did you continue to look for it up to that point?

A Oh, yes, yes.

Q I would like you to describe at this point in the river what ice conditions, if any, you were observing.

A Well, the ice was -- it was broken. There was broken ice and some rather large pieces. I just don't know the correct phrase for it.

Q Let me ask you this: Was it frozen solid from shoreline to shoreline?

A No, no, not all the way across.

Q Let me ask you this then: Was the ice floating or flowing with the current?

A I don't think so. Well, it was -- probably some of it was floating with the current and others wasn't. But basically pretty well -- pretty well covered -- I mean the river was pretty well covered.

Q Did the existence of the ice you are describing in any way impede the movement of the tug and barge through the water?

A We didn't seem to have any problem.

Q Was your searchlight still on at this point?

A Yes.

Q Was your radar still on?

A Yes, it was.

Q What was the stage of the current at this point?

A It was still ebbing.

Q It was still ebbing?

A Right.

Q Did you do anything with your engines at the moment of or immediately after or at any time after contact?

A I stopped immediately.

Q Did the vessels continue moving ahead or did your tug and barge come still in the water?

A No, she had some weight left on her.

Q Could you determine from your point on the tug if either your tug or barge was aground or stranded or were they afloat?

A Well, the barge hit the rock, but -- I mean -- I didn't understand that question. Try that again.

Q Was either your tug or your tow stranded or grounded on something after this impact, or was it still afloat?

A Oh, no, it was still afloat.

Q Both vessels?

A Yes.

Q Prior to getting underway for this voyage or at any time during this voyage did you have occasion to refer to the Coast Pilot or the Light List kept on board the tug OCEAN PRINCE?

A Yes.

Q I mean for this particular voyage?

A I don't recall if I referred to it. Yes, probably -- yes, I did. I'm sure. We always look at them and always check it over.

Q Getting back to the contact that you felt, were you able to make any determination from your place on the tug as to what part of the barge came into contact with this object?

A Yes, it was the port side. The port side of the barge. I could tell by the way she bumped and leaned a little bit that she struck the rock.

Q Was it forward, aft or in the center of the barge?

A I thought it was in the forward end at the time.

Q The forward end on the port side?

A That's right.

Q Did you make any log entry concerning this incident?

A Yes, I did.

Q The entry for February 3rd?

A Yes.

Q Is that the entry that appears next to the time 0130 hours?

A Yes, it is.

Q Mr. Reimer, I would like to ask you questions about the consistency of the ice on the river that night. Do you recall if the presence of ice or the ice accumulation was greater along the shorelines than it was in the river, or was it continuously pretty much the same from shoreline to shoreline?

A No, there was broken ice on the shoreline too. Yes, there was broken ice along the shoreline. I don't know if it was greater or not than it was out in the center, but there was quite a little of it.

Q Did Captain Kiernan ever come up to the pilothouse after this incident?

A I called him immediately.

Q How long did it take for him to get up there, do you recall?

A Oh, not very long. It was only a couple of steps from there to the pilothouse.

Q As far as you know, was he in his cabin prior to your calling him?

A Yes.

Q Did you ever sight that 25 can buoy?

A Not -- not before the -- not before -- not at the time of the grounding, no.

Q Did you sight it afterwards?

A When we turned around and headed back to the Day Line Dock I seen it still half under the ice. It must have broken out. I spotted just part of it, that was all, from where I must have broke the ice around it or something.

Q Was it completely visible or was it partially visible at the time you sighted it?

A It was only partially visible.

MR. SCHULMEISTERS: Again, Mr. Losquadro, please watch it. Ask him what he saw but don't lead him.

MR. LOSQUADRO: All right.

Q In which direction in relation to the tug was the buoy when you first sighted it? This is after the incident.

A In which direction. Well, it would be on my -- while I was rounding up and heading back toward the Day Line Pier it was on my starboard quarter.

Q I believe you said you had started rounding up at that point?

A That's right.

MR. SCHULMEISTERS: I don't think he said that. Will you read that back.

MR. LOSQUADRO: Will you read back his last answer.

(The penultimate answer was read by the reporter.)

Q Did you remain at the controls or did Captain

Kiernan take over or anybody else?

A No. When we headed back to the Day Line Pier, Kiernan I think took over.

Q You say "headed back to the Day Line Pier." Could you point out on this chart which had been marked at the prior deposition where the Day Line Pier is.

A Right over here (indicating).

MR. LOSQUADRO: The captain is pointing to a spot on the --

THE WITNESS: Just below Bear Mountain Bridge there.

MR. LOSQUADRO: -- west shoreline, just below, just south of Bear Mountain Bridge.

THE WITNESS: Right.

Q What was the purpose of proceeding there, do you know?

A Well, we wanted to survey the extent of the damages and make our reports, and so forth.

Q At any time up to the point of the contact with this object did you experience any problem at all with your radar?

A No.

Q With the gyrocompass?

A No.

Q With the engines or steering?

A Nothing.

Q After you arrived at the Day Line Pier did anyone come to your tug or your tow; did anybody arrive, any other vessels?

A Well, later in the day we had an Ekloff barge come up and pumped the remainder of the cargo off.

Q Let me step back a while now: Did you report the accident to anyone on the tug's radio?

A Yes, we notified our office and the Coast Guard immediately.

Q Did the Coast Guard arrive at the scene?

A Yes, they did -- they did the next -- well, that morning.

Q Do you recall how many people came from the Coast Guard?

A Two. I believe there was two.

Q Did they come in a vessel or did they come by land, if you know?

A No, they came by land.

MR. SCHULMEISTERS: Excuse me. Are you talking about Coast Guard people or Ekloff?

MR. LOSQUADRO: The Coast Guard people.

MR. SCHULMEISTERS: All right.

Q Do you recall their names?

A No, I don't.

Q Was there any conversation between you and them or Kiernan and them that you listened to concerning the incident?

A No, just that -- just the regular routine report. And that several other vessels had hit that rock too. It seemed to be -- it seemed to be -- some other people also had this same experience, I guess.

Q Where did you learn that from?

A Well, they was talking about it. They said -- in fact, they commented on it. They called it "The Coast Guard Rock," or something like that.

Q Who is "They," the Coast Guard personnel?

A Yes, the two fellows that was on there.

Q Were they the fellows who said there were prior incidents at that rock?

A Yes.

Q Or was it Captain Kiernan?

A No, it was a three-way conversation there. I guess -- I think they were the ones that had mentioned it.

Q Did you prepare or did Captain Kiernan prepare any written reports that night?

MR. SCHULMEISTERS: Incidentally, for the record, at the trial I may move to strike that as hearsay or irrelevant.

MR. LOSQUADRO: Are you noting your objection?

MR. SCHULMEISTERS: Yes.

MR. LOSQUADRO: All right, the objection is noted. Off the record.

(Discussion off the record.)

Q Were any written reports prepared by you or by Captain Kiernan that night or the next morning and given to those Coast Guard personnel?

A I'm sure there was. I'm sure there was reports given.

Q Written reports by you that night?

A Well, I don't -- gee, there must have been, but I'm not certain of that neither. I can't remember that.

MR. LOSQUADRO: Mr. Schulmeisters, are you aware of any written reports given to those two men that night?

MR. SCHULMEISTERS: I was looking for a 2692 form. I have not found one.

MR. LOSQUADRO: That would not have been done that night. I am talking about a handwritten report that may have been requested of this witness.

MR. SCHULMEISTERS: I looked at the same documents I gave you and I couldn't find any. I looked for that. I will keep on looking. But I haven't seen one so far.

MR. LOSQUADRO: Did those two men, if you know, make any reports to their superiors?

MR. SCHULMEISTERS: I gave you copies of all the documents I had. I don't have it with me.

MR. LOSQUADRO: All right.

MR. SCHULMEISTERS: Just for the record, there were many documents. There was a pollution report of which, of course, I am sure you have copies.

MR. LOSQUADRO: You produced documents. I have not myself looked at all of them.

MR. SCHULMEISTERS: Mr. Kimball, who just arrived, has. (John D. Kimball, Esq., of Healy & Baillie appeared.)

MR. LOSQUADRO: My question was directed to reports that those men made that night, not so much the pollution reports.

MR. SCHULMEISTERS: I think it was in conjunction therewith. So I am sure whatever they brought is supposed to be in those papers that I gave you some time ago.

BY MR. LOSQUADRO:

Q How long did the tug OCEAN PRINCE remain at the Day Line Pier? You may look at your log book to help refresh your recollection.

A (After perusing log book) We left at 1625.

Q On what day?

A It happened to be February 3rd.

Q Where did you leave or proceed to?

A It was proceeding to Standard Tank in Bayonne.

Q Did you have the barge NEW LONDON in tow on the trip down to Bayonne?

A Yes.

Q Was she completely lightened or had she still had cargo on board, if you know?

A I don't -- as I said, they had their own men on there. I don't know whether she was completely lightened or not. She was lightened up pretty well.

Q Do you have any knowledge that night if the barge NEW LONDON had become holed in one or more of those cargo tanks?

A Yes. Yes, I knew.

Q Do you know how many tanks were holed and if so, which ones?

A I don't know which ones were holed.

Q Do you know how many were holed?

A No. I don't think -- I don't think I knew at that time neither.

Q Did the tanker men on the barge say anything to you about which tanks were holed, if you can remember?

A I can't remember, really. I can't remember.

Q Do you know if any effort was made by anyone, including the tanker men, to determine which cargo tanks were holed?

A Well, they should have. I mean they probably found out which ones it was, yes.

Q Do you know if any attempt was made to segregate the cargo from the holed tanks from the tanks that were not damaged during the discharging process into the Ekloff barge?

A I don't know if there was any effort made at all.

Q Was there any conversation between anybody on the tug and anyone on the Ekloff barge about that, if you can remember?

A Well, I -- no, I better -- I don't remember just exactly. I don't remember.

Q Do you know if the two Coast Guard men were present during that lightening process?

A No, they were not.

MR. LOSQUADRO: I have nothing further.

CROSS-EXAMINATION

BY MR. SCHULMEISTERS:

Q Captain Reimer, you produced a license as Exhibit 1 and it was issued in June 1973. Is that the first license that you received from the Coast Guard?

A Yes, it is.

Q Had you ever held any other license prior to this license?

A Never.

Q Have you gone to any navigation school?

A No.

Q Have you ever gone to any radar school?

A No.

Q This license is for uninspected towing vessels.

A That's right.

Q Of not more than 200 tons.

A Right. That's correct.

Q Do you have any pilot's licenses?

A Just what's on the back of that license there.

Q These endorsements are for the western rivers and the Great Lakes.

A That's right. Second-class operator on the Great Lakes.

Q But you do not have any kind of endorsement for the Hudson River?

A No.

Q I believe you had been working for Red Star for approximately eight years or so prior to this occurrence?

A No.

Q 1970 or something like that?

MR. LOSQUADRO: No.

A No, I worked for them approximately a year and a half.

Q For Red Star?

A Red Star, right.

Q Prior to this incident?

A Yes. That's right, yes.

Q On what vessels did you spend that time that you were working for Red Star prior to the accident?

A For Red Star, you mean?

Q Yes, for Red Star.

A Mostly on the OCEAN PRINCE except for one trip on the CRUSADER. For about a month, I guess, on the CRUSADER.

Q And the OCEAN PRINCE was operating out of where at that time?

A Well, we operated out of the Gulf. And we were running from Port Arthur, Texas, to Tampa, Miami, Port Canaveral, Jacksonville, Savannah. And then one trip I made from Tampa to Yorktown, Virginia, and then from there to Philadelphia, the Schuylkill River.

Q But basically the OCEAN PRINCE did not operate in and out of New York Harbor or up the Hudson River?

A That was the first trip that I know of on there.

Q This is the first trip that you know of that the

OCEAN PRINCE came to New York?

A That's right, yes.

MR. LOSQUADRO: While he was on it.

THE WITNESS: Yes. While I was on it, yes.

Q While you were on it or while you were working for the Red Star Company?

A Yes, right.

Q Had you ever prior to this trip navigated as a mate in charge of watch or as a captain of a tugboat up the Hudson River?

A No.

Q By the way, who hired you in Red Star originally?

A Gee -- the Personnel, whatever it was. Who the man was I wouldn't remember.

Q Who was your superior in Red Star approximately around the time of the accident?

MR. LOSQUADRO: That could be a lot of people.

Q Who was your immediate superior?

MR. LOSQUADRO: For what purpose?

A Gee, I --

Q Is there more than one person who deals with you or assigns you to a tugboat?

A Yes, we go through Personnel, which it could be two or three different people up there.

Q Can you give me some names of those people in Personnel?

A I guess Harold Kotch was -- he was in charge of Personnel, I think at that time.

Q To whom did you originally apply for a job in Red Star?

A Well, I was -- I caught the boat in Cape Canaveral. It was a telephone conversation, but I can't remember who I spoke to at that time. It was Personnel.

Q It was someone in Personnel?

A In Personnel.

Q In a telephone conversation from Florida to New York?

A Right, right.

Q And he said go to the OCEAN PRINCE and you will be a mate on it?

A That's right.

Q During that conversation did he ask you what your experience was?

A Oh, yes. Yes, he did.

Q Did he ask you what licenses you held?

A Yes, he did.

Q Did he ask you whether or not you had gone to radar school?

A No, I don't think so.

Q Did he ask you whether you had gone to any navigation school?

A No.

Q Who was the dispatcher or the individual, whatever his title may have been, who told you to come to New York with the OCEAN PRINCE?

A Well, we brought a barge from -- how we got up here: We brought a barge from Tampa to Philadelphia; like I was saying, from Yorktown, Virginia, to Philadelphia.

Q Then after Philadelphia, what happened?

A Well, I got off there. The boat went up to New York after that.

Q Who then told you to get back on the OCEAN PRINCE in New York?

A Well, we -- you have your time off, in other words. You have what -- like vacation, or whatever you want to call it. And then you go back to your scheduled boat there after that.

Q You just called up the office and found out the boat is now in New York and then you rejoined them?

A That's right.

Q Do you recall to whom you spoke?

A No, I don't.

Q Who was the individual in Red Star who tells -- actually in 1974 who was telling the OCEAN PRINCE to go for particular jobs?

A That's the dispatcher. I wouldn't know --

Q How did you receive that message?

A Well, you -- through the radio.

Q On the radio they call you and tell you to go somewhere?

A Yes, you get your orders dispatched to you that way.

Q Did you recognize any of the voices on those radios?

A I never did know them, actually.

Q Do you know any dispatcher?

A No, I don't.

Q How do you know it is not somebody from another company that said it was Red Star?

A No, no.

MR. LOSQUADRO: Somebody else would be giving their business away.

A They have their call letters and I mean they can dispatch boats all over.

Q Does this go through a marine operator or --

A No, locally here you will catch it right on your own VHF.

Q And you have no knowledge whatsoever who the people are who are working in the dispatcher's office?

A No, I have never seen any of them.

Q Is there anyone, other than the individual who first talked to you on the telephone when you first got the job with Red Star, with whom you have met and discussed your experience as a tugboat man?

A No, I don't think so.

Q Who is the manager of operations of Red Star?

MR. LOSQUADRO: At the time?

MR. SCHULMEISTERS: At the time in 1974, that is right.

k

A Walter Christiansen.

Q S-e-n or s-o-n?

A S-e-n, I believe.

Q Who is the manager of operations now?

A I suspect he is still there.

Q He is still there?

A Yes.

MR. LOSQUADRO: Mr. Reimer is employed by Caribe now out of Jacksonville.

Q Why did you leave Red Star?

A That was my own choice. I left.

Q Approximately when?

A Approximately when?

Q Yes.

A Oh, that would be -- let me see. Oh, it must have been -- we will have to backtrack a little bit because --

MR. SCHULMEISTERS: Excuse me, do you know, Mr. Losquadro?

MR. LOSQUADRO: I know he was with them for a while but I don't know exactly when.

THE WITNESS: Yes, I was with them because I only started working --

MR. SCHULMEISTERS: Would it be a matter of months?

MR. LOSQUADRO: I don't know. Why don't you let him try to think.

Q All right. Take your time. See if you can figure it out.

A Well, after that I went with Caribe, and I have been with them, it was a year last December. So it must have been somewhere, October or November, because you can't stay unemployed too long.

Q October or November of 1974, approximately?

A Yes. That's about right.

Q That is close enough.

A It's only -- I hadn't worked in between with anybody else. So --

Q How did you originally learn to use radar?

A Well, we just -- you have it on all the time and you learn to use it with proper instructions from some person.

Q Some other man who who was on the tugboat?

A Right.

Q The captain on the tugboat or something like that?

A That's right.

Q Do you recall who the individual was who instructed you in the use of radar?

A Well, there was -- there were several, several individuals when I was sailing mate, that -- there was captains, and so forth.

Q What is the gain control?

A That's to increase your picture and your brilliance, your gain; to operate, to get your picture clearer.

Q Did the radar on the OCEAN PRINCE have a variable range ring?

A No, it didn't.

Q It did not?

A It did not have.

Q Did it have a fixed range ring?

A Yes.

Q And they could be put on or taken off?

A Yes.

Q You just turn a knob and they appear --

A That's right.

Q -- and you turn a knob and they go away?

A That's right.

Q How many were there on the radar on the OCEAN PRINCE?

MR. LOSQUADRO: If you can remember.

A How many rings?

Q How many rings?

MR. LOSQUADRO: If you can remember.

A Well, that varies on whatever scale you go on.

Q Suppose you had a mile and a half scale. Suppose you had it set at a mile and a half scale; how many range rings would there be?

A You would probably have -- in a mile and a half you would probably have six maybe. Six.

Q Incidentally, that radarscope is circular; is that right?

A That's right.

Q There is a dot in the center; is that correct?

A That's correct.

Q And that center represents your vessel or your radar antenna; is that right?

A Yes.

Q And this mile and a half would be --

A Oh, excuse me on that. That would be -- on a mile and a half you would probably have three. Three rings, yes.

Q Three rings?

A Yes.

Q And that mile and a half then would be from the center of the scope to the edge of the scope; is that right?

A That's right.

Q The radius; is that right?

A Yes.

Q With the aid of the range rings, could you estimate the distance your vessel is from a certain object?

A Right.

Q Could you estimate it say within 100 yards or so?

A Yes, you could.

Q Could you estimate it closer; could you estimate it within 100 feet?

A You could, yes.

Q How about 50 feet, could you estimate it within 50 feet?

A 50 feet?

Q Yes, sir.

A I'm sure you could, yes.

Q Did the radar also have a cursor?

A Yes.

Q What is a cursor?

A That's to -- you can take bearings with it, and you can put it on a particular object in relation to the center. We call it a whisker. It's the same thing. It's a cursor.

Q It is a movable line --

A Right.

Q -- that passes through the center of an object --

A Right.

Q -- and goes through the edge of the screen on both sides, up and down or whichever way you turn it; is that right?

A That's right.

Q Did the radar also have a compass rose on the edge of the scope?

A Yes, they had 360 degree.

Q So with the aid of the cursor and the compass rose you can take bearings of objects --

A That's right.

Q -- that show up on the radar screen?

A Yes.

Q When the radar is on and you are proceeding up a river like the Hudson River, does the picture of the river then show on the scope?

A Does the picture --

Q Does the picture of the river then show on the radarscope?

A Yes.

Q And that is quite similar to what the chart looks like; is that right, except that it's much larger?

A That's right.

Q Could you then pick out an object, and with the use of the cursor get the direction of that object from your vessel, and then look at a chart and identify it?

A Yes.

Q And in that way you can identify the position of your tug or the flotilla?

A That's right.

Q Similarly then also by taking into consideration the range rings you can also estimate say within 50 feet or so the distance you were away, and in that way find out exactly how far from an object you are?

MR. LOSQUADRO: Are you trying to tell us what you know about radar or are you trying to determine what he knows about radar?

MR. SCHULMEISTERS: I am asking him if he can do these things.

A Yes.

Q So with the use of the radar and the chart you can plot your position on the chart at any given time?

A Yes.

Q Approximately how long would it take you to plot your position on a chart?

A Well, it's hard to say when you get -- it all depends where you are taking your bearing from. And river work is -- river work is -- usually it takes -- you know, you really very rarely take a bearing unless you got a little time to do it. I mean on the river you usually just watch your coastline and your shorelines and --

Q You just go up and down --

MR. LOSQUADRO: Let him finish his answer.

MR. SCHULMEISTERS: Excuse me. Go ahead. I'm sorry.

A -- and look for your buoys and watch your shorelines and things like that.

Q So basically then you just glance at the radar, but you basically go up and down with reference to the coastline or any buoy that you might see?

A Yes.

MR. LOSQUADRO: I will object to that. I suppose a lot of that depends upon the weather and the type of visibility you are experiencing at that moment. There are times, I assume, when these vessels navigate blind and rely exclusively on radar. That is a very broad question and I will object to it.

Q You testified earlier today that you did see the shoreline; is that right?

A Yes.

Q Also Mr. Losquadro asked you about the buoy up here on Defendants' Exhibit 2 which is the 1973 edition of Chart 282, labelled here as Buoy No. 19. Do you see that, sir?

A Yes, I see it.

Q Do you also see the buoy down at Havestraw Bay which is Buoy No. 16?

A Right.

Q Did your radar pick up those buoys on the night of the accident?

MR. LOSQUADRO: If you remember.

A I don't -- like I said earlier, I don't remember if they did or not.

Q If they would not have been picked up by radar would you have been concerned?

A Would I have been concerned?

Q Concerned, yes.

A Yes.

Q Incidentally, what type buoys did you expect on the Hudson River on February 3rd?

MR. LOSQUADRO: I object to that. That is a very broad question. What do you mean by that?

Q What type of buoys do you know of, sir?

MR. LOSQUADRO: I object to that too. What do you mean by that? You can ask it but I object to it.

Q You have been navigating tugboats for a long time; is that right?

A Yes, eight years.

Q Eight years, all right. Now what kind of buoys have you encountered in your navigation on rivers similar to the Hudson River?

A Well, every type of buoy that's --

Q Would they be cans; would they be lighted buoys?

A Yes, cans, lighted buoys.

Q Did you expect to pick up cans or nuns on the Hudson River?

A Yes. I was looking for a can.

Q You were looking for a can?

A That's right.

Q How did you know it was a can buoy you were looking for?

A Well, you can see -- it's on the chart. It's marked on the chart as a can.

Q Does the chart mark it as a can buoy?

A That's right.

MR. LOSQUADRO: Listen to that question and look at the chart.

Q In other words, does the symbol here --

A (After perusing chart) Oh, no, no, no. That's a --

Q That is what? What kind of buoy is shown by the symbol?

A Yes, that's -- that's a flashing green buoy, 4 second.

MR. LOSQUADRO: You are identifying the 25 buoy on that chart?

MR. SCHULMEISTERS: The 25 buoy on Defendants' Exhibit 2.

MR. LOSQUADRO: From the prior --

MR. SCHULMEISTERS: From the prior deposition.

MR. LOSQUADRO: All right.

Q What type of buoy does it show?

A It's a green buoy.

Q That is a light type; is that right?

A Light, right.

Q Does it show if it is a can or not?

A No. No, it's a green buoy.

Q It does not show it on the chart as a can buoy?

A No.

Q So why were you looking for a can buoy?

A Well, I don't know. I must have -- well, somewhere along the line they said they take them out in the winter time and put these can buoys in there and nuns, in the winter time on the river, Q Is that because of ice?

A It probably is.

Q You said "somewhere along the line someone said." Do you know who that was?

A No. Probably right in the Light List.

Q In the Light List?

A That's right.

Q So the Light List contained information to the effect that these were can buoys during this time of the year?

A Yes, or the Coast Pilot.

Q In your prior testimony today in response to Mr. Losquadro's question you said that you had looked at a Light List and a Coast Pilot.

A Yes.

Q The two documents that are marked here now as Reimer Exhibit 2 and Reimer Exhibit 3, I realize you do not recognize them as the actual volumes --

A Right.

Q -- but the volumes that you did look at, were they similar to these particular volumes?

A Yes.

Q With the information that these are the ones that were taken off the OCEAN PRINCE, would it then be reasonable to assume that these are the volumes that you looked at?

MR. LOSQUADRO: The assumption will be ours.

MR. SCHULMEISTERS: Let the witness answer the question, please.

A I assume they were, yes.

Q Did you notice in the Light List any warning about not relying on buoys in your navigation?

A I don't recall. I don't recall that, no.

Q Have you ever heard of such a warning in a light list?

A Not to what?

Q Not to rely exclusively on buoys for your navigation.

A Well, I can't say if I have -- I mean if I have or not.

Q Let me refer you to Roman numeral Page No. XIV of Exhibit 2, the Light List. On the left-hand side there is a paragraph entitled "Buoys." Would you please read the first sentence of that paragraph.

A (Witness peruses document.)

Q Aloud, please.

A (Witness continues to peruse document.)

Q Would you please read that sentence aloud.

A Yes, I am reading it.

Q Aloud. Aloud.

A Oh, excuse me. It says here it's -- I got to get my glasses.

MR. SCHULMEISTERS: Go ahead.

MR. BESHLIAN: Do you want to use mine? They are reading glasses.

THE WITNESS: Yes.

(Mr. Beshlian hands reading glasses to witness.)

MR. BESHLIAN: Are they better?

THE WITNESS: Yes, I would say so.

MR. BESHLIAN: They are just reading glasses.

A Yes. "It is imprudent for a navigator to rely on the floating aids to navigation to always maintain their charted position." Is that far enough?

Q That is the sentence; is that right?

A Yes.

Q I'm sorry, did I cut you off in the middle of a sentence?

A No, that's about it.

Q Had you ever heard of that before?

A Oh, I keep up on --

Q Before the United States was brought into this litigation did you testify here in New York under oath?

A Yes.

Q I was not present at that time; is that correct?

A No, you weren't.

MR. SCHULMEISTERS: Let us mark this as Government's Exhibit -- I am up to Government's Exhibit 5, so this would be Government's Exhibit 6.

Off the record.

(Discussion off the record.)

MR. SCHULMEISTERS: Make this one Government's Exhibit 6 for Identification. This is what I understand to be the original of a transcript of Captain Reimer's prior testimony taken on May 6, 1975.

MR. LOSQUADRO: Discovery deposition taken by claimant Pittston Marine in the limitation proceeding on May 6, 1975.

(Document, above described, was marked

Government's Exhibit 6 for Identification.)

BY MR. SCHULMEISTERS:

Q Captain Reimer, I show you Exhibit 6 for Identification. Have you seen this or another copy of it prior to today?

A Prior to today?

Q Yes.

A No, sir.

MR. LOSQUADRO: Well, starting last night and today. Can we go off the record?

THE WITNESS: Oh. Well, last night.

MR. LOSQUADRO: Yes. I gave it to him last night and asked him to read it.

THE WITNESS: Yes. I thought if it was mailed down to me or something like that.

MR. SCHULMEISTERS: All right. Let us clear that up.

Q Was a transcript of your prior testimony in May of 1975 ever mailed to you previously?

A Ever mailed to me?

Q Mailed to you, yes.

A No.

Q When is the first time that you saw it?

A Last night.

Q Last night?

A Yes.

Q Did you read it between last night and this morning?

A I read it over.

Q Did you see anything in it that was not correct?

MR. LOSQUADRO: I object.

A Did I see anything?

MR. LOSQUADRO: I object.

MR. SCHULMEISTERS: On what ground?

MR. LOSQUADRO: I think that is a ball park question. There are about 100 pages of transcript in there. Why don't you ask him specifically. I think the record speaks for itself today and what he said back in that other deposition.

MR. SCHULMEISTERS: If you do that we will go through all that stuff.

MR. LOSQUADRO: I don't know how you are going to do that. I will note my objection. Go ahead, answer the question.

Q Was there anything radically wrong in that testimony that you gave as you read it last night?

A I couldn't recall anything to my knowledge.

Q You did not see anything that you wanted to change in it?

MR. LOSQUADRO: The first question was: Did you see anything radically wrong?

MR. SCHULMEISTERS: I think he answered that.

MR. LOSQUADRO: And he said no, he doesn't recall seeing anything radically wrong.

MR. SCHULMEISTERS: All right.

Q Did you see anything that you wanted to change?

A No, I don't think so.

Q When you were testifying last May you were under oath; is that correct?

A If I was --

Q When you were testifying last May you were under oath?

A That's right.

Q And you were testifying truthfully?

A Right.

Q Did you actually after the accident see oil coming out of the barge NEW LONDON?

A Yes.

Q Did you see oil coming out of that barge when she was at the Day Line Pier?

A Yes, I did.

Q Did you see any oil cleaning operations before you left the Day Line Pier?

A Did we --

Q Did you see, observe anybody cleaning up the oil from the water prior to your leaving the Day Line Pier?

A No.

Q By the way, what did the oil look like that came out of the barge? I mean was it Bunker C --

A No.

Q -- was it No. 4?

A It was 4 Oil.

Q It was No. 4 Oil?

A They are a little lighter than Bunker C.

MR. LOSQUADRO: I doubt you can tell that by looking at it, but he happened to know that is what was in the barge.

MR. SCHULMEISTERS: Off the record.

(Discussion off the record.)

Q Let me show you a document that was marked as Defendants' Exhibit 3 on May 6, 1975, during your prior deposition; do you recognize it, sir?

A Yes.

Q What is that, sir?

A What is it?

Q Yes.

A It's an accident report.

Q Is this an accident report that you prepared after the accident?

A Right.

Q I realize this is a Xerox copy, but do you recognize your signature on the bottom?

A Yes, I do.

Q And you recognize both pages of this report having been filled out in your handwriting?

A Yes.

Q Approximately when did you prepare it?

A I don't recall offhand, but it must have been shortly after the accident.

Q Shortly after the accident?

A Right.

Q It would have been during February 3, 1974?

A I'm not certain.

Q Namely, the date of the accident, the same day?

A Whenever the accident was, I suspect.

MR. LOSQUADRO: He said he doesn't recall the exact date.

THE WITNESS: No, I don't.

MR. LOSQUADRO: But it had to be shortly afterward, I think.

Q Were you on the tugboat when you prepared it?

A I don't recall that either.

Q Had you discussed the stranding or the grounding with anyone prior to preparing this accident report, Defendants' Exhibit 3?

A No, I don't believe so. I don't recall that neither, actually.

Q Let me show you again Reimer Exhibit 4 for Identification, the copy of a Chart 284, which is the Ninth Edition of November 1969. I realize you do not know for sure whether that is the one that you were using that evening, but also you have been advised that that is the one that was taken off the OCEAN PRINCE.

A Yes.

Q With that knowledge, would it be correct to assume that this probably is the chart that you did use?

A I suspect so. I don't know. It would be --

Q Would you please look at the buoy that marks the rock on which you stranded on Reimer Exhibit 4.

A (Witness complies.)

Q Do you see that buoy?

A Yes.

Q Pardon?

A Yes, I do.

Q What is the number on that buoy as shown on Exhibit 4?

MR. LOSQUADRO: What you have in your hand.

A The number is 21.

Q 21?

A Yes.

Q Also in your statement, Defendants' Exhibit 3, marked in May 1975, you refer to a Buoy 21; is that correct?

A Right.

Q So on the night of the stranding you were looking for a Buoy No. 21; is that correct?

A Yes.

MR. LOSQUADRO: You were looking for a buoy numbered 21?

MR. SCHULMEISTERS: That is right.

MR. LOSQUADRO: I think the question is which buoy was he looking for, and ask him to point it out on the chart. What number it is is something he can't determine from the pilothouse.

Q As far as you were concerned that day the number of that buoy was supposed to be 21, not 25; is that correct?

A 21, that's right.

Q You had no idea that the buoy had been renumbered to 25; and this is going back now to February 3, 1974?

A Yes.

Q Pardon?

A Apparently not. I would have --

Q On the OCEAN PRINCE how often did you receive charts?

A How often did we receive?

Q Yes.

A Well, whenever we need them.

Q In other words, you would make a request through the office?

A Yes.

Q Whom would you request the charts from?

A You go up and get them when you feel so that you need them, for the different waters and so on. You can call them up or you can go pick them up yourself.

Q Prior to your joining the OCEAN PRINCE here in New York did you stop by the office?

A No.

Q When you called up do you remember whom you talked to with regard to where the OCEAN PRINCE was and where she was going to go?

A Probably one of the dispatchers more than likely.

Q Did you have any conversation with him about new charts for the Hudson River?

A No.

Q Did you have any conversation with him with regard to local notices to mariners for the New York area or the Hudson River area?

A No.

Q With the tug ordinarily operating down South, did you there receive the Coast Guard's local notices to mariners for the New York area?

A I don't recall. I don't recall.

Q Do you recall receiving any prior to starting this trip?

A No, I don't really. I don't recall that.

Q When you were starting the trip did you expect ice in the river?

A Well, it was in the winter time. I'm sure there was.

Q Pardon?

A It was in the winter time. I'm sure there was ice.

Q Pardon?

A It was in the winter time. I said I'm sure there was ice.

Q So actually even before you went on watch at 11:30 you expected to have ice in the river?

A Yes.

Q Was there anyone at all in the office or from the office with whom you discussed any navigation upon the Hudson River before starting the trip?

A No.

Q Did you discuss it with Captain Kiernan?

A I don't remember. I don't remember whether I discussed it with him. I can't remember now.

Q Could you have ascertained the position of your tug in the river at the time you started looking for the can buoy?

MR. LOSQUADRO: Would you repeat that, please, Mr. Reporter. Was it finished?

MR. SCHULMEISTERS: Yes.

MR. LOSQUADRO: Would you repeat that question, Mr. Reporter.

(The last question was read by the reporter.)

MR. LOSQUADRO: Could you have ascertained the position of the tug in the river --

MR. SCHULMEISTERS: To find out where the flotilla was.

MR. LOSQUADRO: Could he have done it?

MR. SCHULMEISTERS: Yes. Could you have done that?

A It's -- I had the false illusion of ice making up a -- they gave me the wrong -- the broken ice may be off Mystery Point gave me the wrong impression that -- of a false coastline. That's what -- that's what -- on this particular point here with the ebb tide.

MR. SCHULMEISTERS: I will move to strike that as non-responsive. The question is: Could you have ascertained the position of your flotilla, the tug and the barge, in the river by use of radar, bearings, distances or observing some visual mark on the side of the river or any other manner that you may have used to find where the flotilla was in the river? Could you have done that?

A That's difficult for me to answer that.

Q Let me ask you this: Could you have taken a bearing of the Con Hook Island on the radar?

A At the time apparently not.

Q Did you try?

A I tried -- getting the false illusion, I was really concerned about looking for that can buoy. And I was given the false illusion over here from the ice --

MR. SCHULMEISTERS: The witness is pointing to the easterly side of the river.

MR. LOSQUADRO: Immediately above Mystery Point.

THE WITNESS: Mystery Point.

Q All right. The question is: Could you have taken a radar bearing of the Con Hook Island?

A I can't answer that.

Q Could you have taken a distance from the Bear Mountain Bridge with your radar?

A Yes.

Q Did you do that?

A Did I do that?

Q Yes.

A No, I didn't.

Q Could you have taken a distance from the Con Hook Island by radar?

A I could have, I suspect.

Q But you didn't do it?

A No, I didn't.

Q Could you have taken a distance from the east shore of the river and from the west shore of the river?

MR. LOSQUADRO: I am going to have to interject here.

MR. SCHULMEISTERS: All right, let us take one at a time.

MR. LOSQUADRO: Two things he has already testified to: one is that in navigating the rivers, which he was doing that day, it is not characteristic to either be steering courses or to be taking fixes and bearings. There isn't that much time.

MR. SCHULMEISTERS: Mr. Losquadro, I object to your interjection at this moment. I am asking him if he could have done it as a navigator.

MR. LOSQUADRO: I think that prior testimony is relevant and the reason why he is having a difficult time answering that question.

Second of all, he has already partially answered your question by saying he knows or he believes that at one particular point he was getting a false illusion of shoreline because of ice accumulation, which might throw off any radar fixes he might want to make.

MR. SCHULMEISTERS: Mr. Losquadro, you are testifying now. I am objecting to it.

MR. LOSQUADRO: I am repeating prior testimony that he has given.

MR. SCHULMEISTERS: I have my right to

cross-examine. Please let me proceed in my way.

MR. LOSQUADRO: All right. You do, but I think that prior testimony is relevant right now.

MR. SCHULMEISTERS: That may be so, but right now I am entitled to my cross-examination.

MR. LOSQUADRO: All right.

BY MR. SCHULMEISTERS:

Q Could you have taken a distance from the westerly shore of the river by radar?

A I know the answer you want, but --

Q Could you have taken the distance or not?

A -- but I just can't --

MR. LOSQUADRO: Wait a minute. Did you have more to say, Captain Reimer?

THE WITNESS: I know exactly the answer the man wants, and I just -- and I feel that it's -- it would be putting me right on the spot, actually.

MR. LOSQUADRO: Answer it fairly. If it is a question that can be answered in your mind, then I think you ought to try to answer it. If it can't be answered, say so, and say why.

THE WITNESS: Well, it's -- it's -- you got a westerly -- taking the -- he wants to know if I could tell how far I was off from the west side of the bank. With the ice illusion it was hard to determine.

Q You mentioned that there was ice north of Mystery Point; is that correct?

A That's correct.

Q Could you have taken a distance off Mystery Point where there was no ice?

A I didn't say there was no ice there.

MR. LOSQUADRO: He didn't say there was no ice there.

Q You previously just mentioned about ice being north of Mystery Point. Could you have taken a distance off Mystery Point?

A If I could have, I would have, let me say that.

Q Did you try?

A I tried all the -- all -- every precaution that was necessary to take I have taken.

Q Such as? Would you please list them.

A There is -- the precautions, you mean?

Q Yes, the precautions which you took.

A Well, I reduced the speed, looking in the radar, looking with the searchlight, and trying to take -- relation -- get some relations of the location of where the boat would be.

Q Where was the deckhand, Mr. Herbert, when you started looking for the can buoy?

A He went down to get some coffee.

Q Thereafter, he made the coffee and then he came back up to the wheelhouse; is that correct?

A That's probably what happened.

Q So during that time you were the only one up there in the wheelhouse; is that correct?

A Right.

Q And when he came back with coffee did he bring coffee for you?

A I'm sure he did. That's probably --

Q Did you drink that coffee?

A Yes.

Q And that was all prior to the grounding or stranding; is that right?

A Yes. Right around there.

Q Is that a usual procedure for the deckhand to go and get the coffee?

A Yes.

Q It is done on the OCEAN PRINCE all the time?

A It's done on every vessel.

Q When the deckhand goes to get the coffee the man at the wheel is the only one who is in the wheelhouse; is that right?

A Yes.

Q Does the deckhand have any other duties other than getting coffee?

MR. LOSQUADRO: If you can answer that question seriously. It was couched fully facetiously.

MR. SCHULMEISTERS: It was not couched facetiously.

MR. LOSQUADRO: Go ahead, Mr. Reimer.

A Yes, he has his other duties.

Q Do they include washing the galley or swabbing down the heads?

A Yes.

Q That is usually done during the time that he is on watch; is that right?

A That's right.

Q Including during the night hours; is that right?

In other words, 6 to 12? I'm sorry, you stood the midnight to 6. During the 12 to 6 watch stretch.

A 12 to 6, yes.

Q Midnight to 6 in the morning; is that right?

A No, usually from noon to 6 in the evening.

Q Did you make any plans as to where you would take over the watches during your stretch of the navigation prior to leaving Constable Hook in Bayonne?

MR. LOSQUADRO: Would you repeat the question, please.

(The last question was read by the reporter.)

MR. LOSQUADRO: Did you understand the question?

THE WITNESS: Yes.

A No. Make any plans, you say?

Q Yes.

A No.

Q So basically you expected to come up, take a look at the chart, take a look at the situation and then continue your navigation?

A Right.

Q Did you see, prior to stranding, the Con Hook light which on Reimer Exhibit 4 is marked Light No. 23?

A No, I didn't notice it.

Q You didn't notice the light?

A No.

Q Did you look for that light?

A I looked for every aid that I could possibly get.

Q Did you try to take a danger bearing of the Con Hook Island?

MR. LOSQUADRO: A danger bearing?

MR. SCHULMEISTERS: Yes, a danger bearing.

A I don't understand what you mean by a danger bearing.

Q Do you know what a danger bearing is?

A No, that's what I'm asking.

Q All right. If you don't know what a danger bearing is, then you can't take one; is that right?

A That's right.

MR. LOSQUADRO: Are we on the record with this?

MR. SCHULMEISTERS: Yes.

MR. LOSQUADRO: What is a danger bearing?

MR. SCHULMEISTERS: You can get your expert.

MR. LOSQUADRO: I don't know. I never heard of a danger bearing.

MR. SCHULMEISTERS: All right.

Q Did you see the lights on the Bear Mountain Bridge as you passed under the bridge?

A Yes.

Q Did you look back towards the Bear Mountain Bridge at any time, say within five or ten minutes prior to stranding?

A I don't recall if I did or not. I truthfully don't recall.

Q After the stranding and after the vessel was turned around and was still in the vicinity of the obstruction that we are talking about, did you then see the Bear Mountain Bridge lights?

A After we were turned around?

Q Yes.

A Yes. When we started on our way down; when we started down the river again.

Q With respect to the light on Con Hook, did you see it after the stranding?

MR. LOSQUADRO: If you remember.

A I don't remember that.

Q Would it surprise you that Captain Kiernan has testified that he did see the Con Hook light?

A He did see it?

Q Yes.

A Maybe he did. I don't know.

Q What is the visibility of the light on Con Hook?

A The visibility?

Q Yes, the range or visibility of that light.

A It's flash -- it's a white light. It flashes every four seconds.

Q Is there any way that you can ascertain how far that light should be observable under normal circumstances at night?

A If you look at the Light List.

Q Did you do that prior to stranding?

A I don't recall whether I did it.

Q Incidentally, the tug and the barge, as they were being navigated up the river, they were made up so that they were operating as one unit; is that correct?

A That's right.

MR. LOSQUADRO: What does that mean?

Q All the motive power was in the tug; is that right?

A Yes.

Q And if any movement was to be made by the flotilla, it would have been as a result of a rudder movement or engine movement of the tug; is that correct?

A Yes.

MR. LOSQUADRO: We can stipulate that it was a dumb barge without motor power or steering facilities with the exception of --

MR. SCHULMEISTERS: Mr. Losquadro, right now I object to your interjection.

Q Incidentally, how are charts kept up to date?

A How are they kept up to date?

Q Yes.

MR. LOSQUADRO: On board a boat, you mean?

MR. SCHULMEISTERS: Yes, on board a boat. On board a tugboat.

A Well, you go up and you purchase them yourself. I mean it's up to the waters you are running and --

Q What is a Notice to Mariners?

A Well, that's further corrections on the charts.

Q What kind of Notices to Mariners do you know of, generally speaking; what type are there?

A Well, they are sent to -- usually you get them on the vessels by -- through the office of your employer.

Q Did you correct charts on the OCEAN PRINCE from Notices to Mariners that you received?

A I don't recall if I did or not.

Q Do you know that Captain Kiernan made such correction?

A I don't know.

Q Was it a practice on the OCEAN PRINCE while you were serving on it to go through Notices to Mariners and make corrections on charts?

A Well, when -- I believe we did get them on there. I'm not certain.

Q You believe you got the Notices to Mariners, but my question is: Was it a practice to regularly go and correct charts as you got the Notices to Mariners for the areas where you were going?

A It would have been, yes.

Q Now, assuming that the chart that was on board was the 1969 edition of Chart 282, the one that labels the buoy as 21, marking the obstruction where you stranded; and also referring to your statement, Defendants' Exhibit 3 for Identification, where you referred to that same buoy as No. 21; and also seeing that there is a subsequent 1973 edition of the chart, which was previously labeled as Defendants' Exhibit 2 for Identification, which had a different number for the buoy, No. 25.

Considering all of that, would it be correct to say that on this particular voyage up the Hudson River the chart that was on the OCEAN PRINCE was not corrected?

MR. LOSQUADRO: I am going to object to that question. I don't know if you can draw that assumption.

MR. SCHULMEISTERS: I would like to have an answer as to whether or not that chart was corrected.

MR. LOSQUADRO: As to that particular point? As to that particular question?

MR. SCHULMEISTERS: That is right.

MR. LOSQUADRO: Was the chart corrected with regard to the renumbering of the buoy? I think that is your question.

MR. SCHULMEISTERS: That is right.

MR. LOSQUADRO: All right. The answer to that is?

A I don't know whether this is the chart.

MR. LOSQUADRO: He is asking you to assume that that 1969 chart was the chart on board on February 2nd and 3rd. With that assumption, is it correct to assume that the 1969 chart was not corrected to the extent of renumbering that buoy?

THE WITNESS: Well, I assume that's right, yes.

BY MR. SCHULMEISTERS:

Q Would you look at Reimer Exhibit 4, this chart here, and tell me: Do you see any corrections with reference to any Notices to Mariners anywhere on that chart?

MR. LOSQUADRO: I am going to object to that. You are asking a very broad question. We don't --

MR. SCHULMEISTER: Mr. Losquadro, if you would like to help, if you can show any Notices to Mariners' corrections on here.

MR. LOSQUADRO: There are scribblings all over that chart.

Q All right. Let me ask you this, Captain Reimer: How do you make Notice to Mariners' corrections on a chart?

A How do you make them?

Q Yes. Describe the procedure.

A You just -- you read your Notice to Mariners and you go about making your corrections with the characteristic changes, and so forth; different locations, and so forth.

Q Do you then also make a notation somewhere on the margin of the chart as to through which Notice to Mariners the chart has been corrected?

A Yes, you are supposed to do that.

Q There is no such marking anywhere on this chart, Reimer Exhibit 4; is that correct?

A I don't know.

Q Look at it, please.

A (Witness peruses Reimer Exhibit 4 for Identification.)

MR. SCHULMEISTERS: Would you repeat the question, please.

(The penultimate question was read by the reporter, as follows:

"Question: There is no such marking anywhere on this chart, Reimer Exhibit 4; is that correct?")

A Apparently not. Apparently not.

Q Do you remember, did you ever fill out a Coast Guard accident form 2692?

A I must have, yes.

MR. SCHULMEISTERS: Off the record.

(Discussion off the record.)

Q About how long - this is timewise - prior to the stranding did you start looking for the can buoy?

MR. LOSQUADRO: I think we have been through this ground before.

MR. SCHULMEISTERS: I don't think we have timewise. How long in time --

MR. LOSQUADRO: You mean time?

MR. SCHULMEISTERS: Yes.

MR. LOSQUADRO: I'm sorry.

Q How long timewise prior to stranding did you start looking for the can buoy?

MR. LOSQUADRO: All right. You have already testified about this X being the approximate position when you started looking for the buoy. Now he is asking you for a time estimate of how long you were proceeding from that point X to the rock.

MR. SCHULMEISTERS: Counsel has put in front of the witness Defendants' Exhibit 2 and also the log book --

MR. LOSQUADRO: The log book.

MR. SCHULMEISTERS: -- which is Government's Exhibit 1.

MR. LOSQUADRO: That is right. And just so the record shows, I pointed to the top entry, the first entry on February 3rd in that log book, which reads: "0110 hours, Bear Mountain Bridge."

MR. SCHULMEISTERS: Yes.

MR. LOSQUADRO: Thus pointing out the document to the witness as a point of reference.

A 0130 was the grounding, so it must have been approximately 20 minutes.

Q 20 minutes?

A Yes.

MR. LOSQUADRO: From where to where?

THE WITNESS: From Bear Mountain Bridge to the ground.

MR. LOSQUADRO: All right.

Q And you started looking for the buoy in the position that is marked X over here; is that right?

A Yes.

Q And at position X you were proceeding at what speed?

A Probably half speed or less.

Q Is that where you reduced your speed, at the position X; is that your testimony now?

A Well, that's probably about it, yes.

Q I get about 1,750 yards as a distance between the X and the point of stranding. Will you check me on that, please, and see if that is the approximate distance you get (handing dividers to witness).

A (After employing dividers) You said -- how much did you say?

Q I get about 1,750 yards.

A That's fairly accurate, yes.

Q And the distance from Point X to the Bear Mountain Bridge is what?

A (After again employing dividers) Oh, just a little bit -- a little less than a mile.

Q Can you give it to me in yards?

A Yes, I will give it to you in yards. We get approximately about 1900 yards.

Q Did you at any time after you reached point X on Defendants' Exhibit 3, the 1973 chart, did you at any time after reaching that point become concerned as to the safety of your flotilla?

A I am always concerned about the safety of my flotilla.

Q More than normal concern by virtue of your not finding the buoy; that is what I mean?

THE WITNESS: Repeat the question again.

Q Let us put it this way: You started looking for the buoy at position X there; is that right?

A Yes.

Q You did not find it?

A That's right.

Q Did there then come a time when you became concerned about a possible running into danger prior to stranding?

THE WITNESS: I still don't know what answer you want.

MR. SCHULMEISTERS: Read the question back, please.

(The last three questions and answers were read by the reporter.)

MR. LOSQUADRO: This is after he reached or passed the point marked X?

MR. SCHULMEISTERS: Yes, this is after passing point X.

MR. LOSQUADRO: Do you understand the question?

A Yes, I was concerned.

Q About how soon in time after passing X did you start becoming concerned?

A I don't recall what the time was.

Q Would it be within say five minutes looking or after ten minutes looking?

A Oh, I would be wrong to say. I don't recall what the time was.

Q What was the range of the searchlight of the OCEAN PRINCE, approximately?

A I don't know. It was a good searchlight, working properly. And I mean just what the range of it is --

Q Approximately how far away would you expect to pick up a buoy, a can buoy, considering the conditions that you had that night?

MR. LOSQUADRO: I will object to that because there may be other things other than the illumination of the light which might prevent him from seeing it.

Q With the experience that you had, with the conditions that you had, about how far away did you expect to pick up the buoy?

A Plenty far enough to avoid running on --

Q Would it be a matter say of a half mile?

A (No response.)

Q More or less?

A I can't answer that question because I'm getting rather confused.

Q You had been on the OCEAN PRINCE for about a year prior to the stranding; is that correct?

A That's right.

Q At night when there was no snow, when there was a clear atmosphere, how far would the ship's searchlight reach?

MR. LOSQUADRO: I am going to object to that too. You might ask him if he has ever tried to make a determination by fixing a spot a distance away and trying to see if the illumination reached it. I mean that's a tough question. You may not get an accurate answer.

Q Have you picked up buoys half a mile away with that searchlight at night?

A (No response.)

Q Have you picked up buoys half a mile away on a clear night with that searchlight on the OCEAN PRINCE?

A Oh, give or take -- I would say give or take, we probably would have, yes.

Q Approximately within a half a mile?

A Yes.

Q Incidentally, all the other towing companies that you testified to as having worked for earlier, Interstate and --

MR. LOSQUADRO: Poling Brothers.

Q -- Poling Brothers.

MR. SCHULMEISTERS: I am talking about him working as a deckman.

MR. LOSQUADRO: I'm sorry.

Q On all those trips your experience was down South, is that right? In other words, it was not experience in New York Harbor?

A Oh, no, no. With Interstate we run from Linden to Providence and Portland and Boston.

Q But not up the Hudson River?

A No.

Q Actually, the only prior experience of going up the Hudson River was when you were with Poling Brothers as a deckhand?

A And on the ships going --

Q On big ocean-going ships?

A That's right.

Q And during those times you had nothing to do with navigation?

A No.

Q Was there any damage to the bottom of the OCEAN PRINCE after the accident?

A No.

Q The barge men on the NEW LONDON, they had nothing to do with navigation; is that right?

A That's right, they didn't.

Q When the tug and barge made up, as was shown in the exhibit earlier which you looked at, the only people who had anything to do with the operation or movement of the flotilla were people on the OCEAN PRINCE?

A That's right.

Q When Captain Kiernan came up to the wheelhouse after the stranding he took over the navigation; is that correct?

A Yes.

Q Wasn't it still your watch?

A It was, right.

Q Why did he take it over?

A Well, I asked him to. I asked him to --

Q What did you say to him?

A Oh, I don't remember the exact words.

Q Can you give me the substance of what you said?

A I probably said, "John, you take her over for a minute."

Q Was that because he had maybe better knowledge of the Hudson River than you did?

A That was never brought up in the conversation.

Q Incidentally, you mentioned that you had checked the gyrocompass; where did you do that and how did you do it?

A I said that the gyro had no errors.

Q Yes, all right. You said the gyro had no errors. How did you know that? I think then your testimony was that you had made checks with the ranges.

A That's right.

Q Which range or ranges did you use to make the check on this trip up the Hudson River?

A Well, there was -- I said that the gyro had no error in them, but I didn't say I checked it going up the Hudson River at that particular time or on what range. But I --

Q So how did you know that the gyro had no error?

A Well, I had checked it on earlier, previous trips.

Q So your statement that the gyro had no error is based on checking the compass on prior trips?

A Yes.

Q Prior to this voyage had you ever navigated in ice before, as a mate or a master of a tugboat?

A Yes, I had run into ice.

Q Where?

A Probably through the C & D -- through the Cape Cod Canal, going in that direction, toward whatever place it was.

Q Have you ever seen ice accumulations around buoys when you navigated through ice?

A I can't recall if I have.

Q Incidentally, in the span between your being at point X on Exhibit 2 marked in May 1975, and the point of stranding, I understand you looked at the radar, you handled the searchlight and you also steered the boat, or the flotilla, rather; is that right?

A Yes.

Q There was no one else who helped you; is that right?

A That's right.

Q Did you also make any security calls on the radio?

A I made one going around -- going underneath the Bear Mountain Bridge.

Q After that you did not do anything?

A No. That's before I approached the Bear Mountain Bridge I called a security call.

Q Here you marked on Exhibit 2 the point of X pretty much in the center of the river. How did you ascertain that position?

A (After perusing Exhibit 2) Well, that was apparently an approximate position of the --

Q You were trying to stay in the center of the river as a navigator?

A The X is an approximate position I would say, yes.

Q Then the next question is: You were trying to navigate in the center of the river; is that correct?

A I was trying to -- not particularly.

Q You say not particularly in the center of the river?

A No, not particularly in the center of the river.

Q Which side of the river did you favor, your right-hand side or your left-hand side as you were navigating up the Hudson River?

A As I was navigating up the Hudson River?

Q Yes.

A Well, you had to look at your chart and refer to where you -- wherever your situations were.

Q Well, let us take the position from the Bear Mountain Bridge up northwards.

A Well, from there up I probably favored the right-hand side a little bit.

Q Could you measure for me, please, the distance between the rock and the easterly side of the river at the place where the barge stranded and the navigable portion, where you had enough water within which to navigate with your tug and with your barge.

MR. LOSQUADRO: Doesn't the chart speak for itself?

MR. SCHULMEISTERS: May I please develop my testimony my way?

A (After using dividers) It would be approximately 500 yards.

Q What is the distance between that obstruction or the rock to the westerly side of the navigable portion of the river?

A There is no -- there is nothing on the westerly side. We didn't get through there.

Q In other words, that area of the river cannot be navigated?

A I wouldn't recommend it.

Q You would not try it?

A That's right.

MR. SCHULMEISTERS: Off the record.

(Discussion off the record.)

Q Incidentally, what was the strength of the tide, how many knots?

A Oh, it may have been about -- it was the beginning of the ebb. It was about --

Q This is shortly prior to stranding.

A About a knot, I suspect.

Q About one knot?

A Yes.

Q In what direction was it flowing?

A It was flowing southerly.

MR. LOSQUADRO: The tide was ebbing. We have been through these questions before.

Q Was it flowing straight south or was it flowing southwesterly?

A Well, at that particular point the river runs practically north anyway, so it had to be flowing south; or south -- a little south, southwesterly.

Q Mr. Losquadro asked you about the light on Iona Island; did you see it here on Exhibit 2?

A Yes.

Q About how far away were you from that light when you first saw it?

MR. LOSQUADRO: Do you recall seeing that light?

THE WITNESS: Pardon me?

MR. LOSQUADRO: Do you recall seeing that light?

THE WITNESS: I don't recall.

MR. LOSQUADRO: Do you have a specific recollection today of having seen that light that night is, I think, the proper question.

BY MR. SCHULMEISTERS:

Q I think your prior testimony was that you did see that light on that night. That is what my notes show.

A If I said I seen it, then I must have seen it, but I don't recall right now because, as I say, I'm --

Q Let me show you Reimer Exhibit 3, Volume II of the Coast Pilot, and let me refer you to Chapter 12, starting on Page 234, up to I guess Page 238. Would you look at that, please, and tell me if you read that portion of the Coast Pilot, that is Pages 234 to 238, inclusive, prior to the OCEAN PRINCE starting its voyage northbound in the Hudson River on February 2nd?

MR. LOSQUADRO: Yes or no.

A Well, I'm sure I looked at it, I don't recall. I take all the precautions I possibly can.

Q Would you please turn to Page 238 at the bottom left-hand corner. There is a paragraph following a small caption, "Con Hook." Do you recall having read that?

MR. LOSQUADRO: Do you recall today having read it?

THE WITNESS: Having read it at the time?

Q Having read it before going up river?

MR. LOSQUADRO: Do you have any recollection today of having read that?

THE WITNESS: No, I don't.

Q Would you read it now, please.

MR. LOSQUADRO: Mr. Schulmeisters, this deposition is running very long. The thing speaks for itself. You can put it in evidence. The man has testified he does not recall today whether he read that or not. The document speaks for itself after that. We are running this deposition very late and this man has to catch a plane. You don't need him to read that into the record.

MR. SCHULMEISTERS: I am not going to ask him to read it into the record.

Q Did you read it just now?

A Yes.

Q As you were navigating up northbound after having passed Bear Mountain Bridge did you consider the fact that you would be set towards the westerly side?

A Well, we took all those things into consideration.

Q Did you allow any leeway as you were steering?

A I'm sure I must have. I don't recall.

Q You don't recall how much leeway you would have allowed?

A I don't know. I wouldn't be able to say that.

MR. SCHULMEISTERS: I don't have any other questions. Thank you very much.

THE WITNESS: Thank you.

BY MR. BESHLIAN:

Q Captain Reimer, do I understand your testimony to be that you were assigned to the OCEAN PRINCE for about a year prior to coming up to the New York area?

A Yes. Something like that, yes.

Q And that your tow boat experience in the New York Harbor prior to your coming up here in February of 1974 was limited to a short trip aboard the tug - CRUSADER, was it?

A CRUSADER, yes.

Q And that you did not sail in the Hudson River with the CRUSADER at that time?

A That's right.

Q Now, when you came North with the barge that you described in your testimony - you said you brought a barge to Philadelphia; am I correct?

A That's right.

Q You left the tug in Philadelphia and went home?

A That's right.

Q Was this the first time you had returned to the tug OCEAN PRINCE?

A (No response.)

Q In February of 1974, was that your first return to the tug OCEAN PRINCE after leaving it in Philadelphia?

A Probably, yes.

Q When you left from Philadelphia did you know you were returning to the OCEAN PRINCE in New York?

A Yes.

Q The company had told you that?

A Well, I knew the boat was going to be there.

Q And you were assigned to the boat?

A Yes.

Q When the boat was brought North did anyone ask you about your experience in New York, anybody in the office?

A No.

Q Not at all?

A No.

Q Prior to your returning to the boat in February did you have any conversation with anybody in the office, a dispatcher or someone in charge of operations,with respect to your experience in New York?

A No.

Q Excuse me?

A Not to my knowledge.

Q Do you recall what time of the day it was that you joined the OCEAN PRINCE in February or around February 2nd?

A I don't remember.

Q Did you stand any watch prior to the 12 to 6 watch that you were on on February 3rd?

A I don't recall that.

Q Would the log book indicate if you stood any watch?

A It should, yes. I think I just joined it that day. I'm not sure.

MR. LOSQUADRO: Turn back a couple of pages and see if you recognize your handwriting.

Q When you were on watch, didyou make the entries in the log book?

A Yes.

Q Would you look at the entries for February 1.

A (Witness complies.)

Q Are any of those in your handwriting?

A No, sir.

Q How about February 2?

A 1330, that's my handwriting in there.

Q 1330?

A Right.

MR. LOSQUADRO: You might want to ask him --

Q What is that entry Mr. Reimer?

A At Bushey's Yard

MR. LOSQUADRO: You might want to ask him where the tug was when he joined it. He might be able to work it out that way.

MR. BESHLIAN: That is a good question.

Q Where was the tug when you joined it?

A It must have been there, apparently.

Q At Bushey's Yard?

A I guess so, yes.

Q You referred to the Coast Pilot, Volume II, and the Light List prior to your starting on the voyage with the barge NEW LONDON up the Hudson River; am I correct?

A Yes.

Q You examined those books?

A Yes.

Q Did you examine them with a chart? Did you check any of the various buoys, and so forth, that were set forth in the Light List with the chart?

A Apparently -- I don't remember that detail. I can't say for sure. It's --

Q Did you discuss any of the conditions that you might meet with Captain Kiernan or anybody else prior to taking the watch?

A No, I don't recall that we spoke about it.

Q Let me show you Reimer Exhibit 3. It is the Coast Pilot. Chapter 12 sets forth the Hudson River. Do you recall reading any parts of this?

[illegible] I'm sure I went over it.

Q Did you read the paragraph which is entitled

"Ice"? Do you remember reading that?

A I don't recall, but -- I don't recall offhand.

Q If you read it, would you have taken into consideration the information that is in there, when navigating?

A If I had read it, I --

Q Do you want to read it. Just glance through it now.

A (After perusing Coast Pilot) All right.

Q You have read it, Captain Reimer?

A Yes.

Q Do you believe in navigating you would have taken into consideration the information that is in that paragraph?

MR. LOSQUADRO: Repeat that question, please.

Q Do you believe when you were navigating you would have taken into consideration the information that is in the paragraph designated as "Ice"?

MR. LOSQUADRO: When, at any time?

MR. BESHLIAN: No, on the night of February 2-3 of 1974.

A Yes. If I recall, if I had read it, I'm sure I probably took it into consideration. I don't recall particularly.

Q Captain Reimer, you filled out an accident report which was marked as an exhibit at a prior deposition.

A Yes.

Q In that accident report you designated the place of grounding as Buoy 21; is that correct, sir?

A That's right.

Q Would that buoy number have been obtained from a chart that you would have been using to navigate?

A Probably, yes.

Q If you read the Light List, and did in fact compare it with the chart, would you have been relating the numbers on the chart that you used to navigate to the information that was in the Light List book?

A I don't -- I missed part of that question.

Q All right. You stated prior that you referred to the Light List to acquaint yourself with the conditions that you would meet on your voyage. Now, if you did in fact use the Light List and were using it in conjunction with the chart that you had for navigation, would you be referring to the buoy numbers on the chart when checking it against the Light List?

MR. LOSQUADRO: I am going to object. He did not testify. There is no record to the effect that he read the Light List in conjunction with a chart.

Q Did you in fact read the Light List in conjunction with a chart?

A I don't recall whether I did or not.

Q But you did testify, Captain, that you knew you should look for a can buoy; that they were removed during the ice season. Do you recall where you obtained that information?

A I imagine in the Coast Pilot.

Q And that would have been with respect to specific buoys; am I correct, sir?

A I guess so, yes.

Q This was your first experience in navigating in the Hudson River in the winter time; am I correct?

A I would say so, yes.

MR. BESHLIAN: I have no other questions.

MR. SCHULMEISTERS: I just have one question.

BY MR. SCHULMEISTERS:

Q Referring to Reimer Exhibit 4, in the area of the obstruction just south of Con Hook, there seem to be some light pencil marks; did you make them?

A I couldn't answer you truthfully on that.

Q Do you know who made them?

A I have no idea.

Q On the chart that you were using that night did you make any marks?

MR. LOSQUADRO: If you remember.

A I don't remember that neither.

MR. BESHLIAN: I do have one question.

MR. LOSQUADRO: I do want to say in relation to that that I had that chart out last night; I had a pencil in my hand, and I may have - although I don't know - pointed to that area and left some pencil markings.

BY MR. BESHLIAN:

Q Captain Reimer, when would you have learned you were bound to Kingston with the barge NEW LONDON?

A When did I learn?

Q Yes.

A Of our trip, you mean?

Q Yes.

A Well, I don't know when we got the report on that.

Q But did you learn of it prior to going on watch?

A (No response.)

Q Let me put it this way: Did you know when you made up to the NEW LONDON that you were bound to Kingston with it?

A Oh, yes.

MR. BESHLIAN: All right.

MR. LOSQUADRO: I have just a couple.

REDIRECT EXAMINATION

BY MR. LOSQUADRO:

Q Did the OCEAN PRINCE remain your regular boat after this casualty for a period of time?

A Yes.

Q Do you recall ever checking the gyrocompass for for error after this casualty?

A Yes. There was no error in there.

Q Did you find any error after the casualty?

A No.

Q You testified that when you worked for Interstate you had gone to Providence and places North - as navigator, I assume you meant?

A That's right.

Q Prior to doing that had you ever been to Providence before?

A Oh, yes.

Q For whom and on what boat?

A It was on the CRUSADER for Red Star.

Q Prior to going to Providence for Red Star on the CRUSADER had you been to Providence before that as a navigator?

A No.

Q Did you undergo any particular training for that trip?

A No.

Q Prior to going to San Juan, Puerto Rico for Caribe, your present employer, had you been to San Juan as a navigator before?

A Yes.

Q For whom?

A Gulf Atlantic.

Q As a navigator?

A Yes.

Q Prior to going there for Gulf Atlantic had you been to San Juan before, as a navigator?

A No.

Q Did you undergo any particular training for that first trip?

A No.

Q As the captain or mate on a tugboat, are you familiar with the charts on board the tug?

A Yes.

Q What is there, et cetera?

A Yes.

Q Whose responsibility is it to obtain charts, new charts or charts for areas that you do not have?

A Whose responsibility?

Q Yes.

A Repeat that question again. I lost you somewhere. I'm getting mentally fatigued here, what is left of me.

Q Just a few more questions and we will be done. Whose responsibility is it to make sure that proper charts are kept on board the tug?

A Well, it's the personnel on board the vessel.

Q If you have any need for a chart, in your opinion, what would you do?

A We would just notify the company or call and pick them up at Low -- whatever it is on here. Red Star has an open account there.

Q Let us look at these charts again.

Captain, I am showing you the chart which was marked Defendants' Exhibit 2 at your prior deposition. Would you circle the buoy that you came into contact with in red.

A (Witness complies.)

Q It has already been marked with the line "Point of grounding"; is that so?

A That's right.

Q What is the number of the buoy on that chart?

A It's 25.

Q I am going to hand you the other chart we have been referring to today which has been marked Reimer Exhibit 4 at today's deposition. This is the 1969 chart. Would you put your finger on the buoy you came into contact with?

A (Witness complies.)

Q Would you circle it, please, in red.

A (Witness complies.)

Q Would you put a line off to the side and mark that "Point of grounding."

A (Witness complies.)

Q Is there any doubt in your mind now or was there any doubt in your mind then that the buoy that you have just circled on both these charts was the buoy with which you came into contact? Is there any doubt in your mind?

A No.

Q None at all?

A None at all.

Q What is the number of the buoy on the chart which has been marked Reimer Exhibit 4?

A 21.

Q Is there any difference that you can note on these two charts regarding that area immediately around the buoy, other than the numbers?

A No.

Q Do those buoys or the symbols for those buoys on the two charts mark the same obstruction?

A Yes.

Q When you were proceeding up there I believe you testified you were expecting to find a black can buoy; is that correct?

A Yes.

Q Did you know that prior to passing the Bear Mountain Bridge?

A Yes.

MR. LOSQUADRO: All right. I have no further questions.

MR. SCHULMEISTERS: I just have one.

RECROSS-EXAMINATION

BY MR. SCHULMEISTERS:

Q Captain, did the barge strike the buoy or the obstruction?

MR. LOSQUADRO: Do you know what the barge struck? Or the obstruction which it marks; I assume that is what you are saying?

MR. SCHULMEISTERS: No.

Q Did it strike the rocks or did it strike the buoy?

A The barge struck the rocks.

Q The rocks?

A Yes.

Q It did not strike the buoy?

A Well, I don't know that. I didn't --

Q In other words, when you previously have testified that the barge struck the buoy, you really do not know whether the barge struck the buoy itself physically; is that correct?

A No -- Try that one more time before I fall over completely.

Q You previously talked about striking the buoy. Actually, you are not really sure whether the barge struck the buoy itself; is that correct?

MR. LOSQUADRO: Is that correct or not?

Q Is that correct?

A Well, yes, that's right.

Q The only thing you really know is that it struck an obstruction there, or the obstruction that the buoy marks?

A Yes.

Q Did it strike the westerly or the easterly side of the obstruction?

MR. LOSQUADRO: If you know.

A Did the barge strike the westerly or the easterly side?

Q Or the easterly side of the obstruction, or did it strike it head on?

A No. It struck the easterly side of the obstruction, I would say.

MR. SCHULMEISTERS: Thank you. No further questions.

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(Whereupon, at 2:25 p. m. the deposition of this witness was concluded.)

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STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, ARTHUR MAZLIN, a notary public duly commissioned and qualified in and for the County of Kings, State of New York, do hereby certify that, pursuant to notices, there came before me on the 27th day of April, 1976, at 10:30 a. m., at the offices of Healy & Baillie, Esqs., 29 Broadway, New York, New York, the following named person, to wit: WALTER E. REIMER, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matter in controversy in this cause; that he was thereupon examined upon his oath and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness; and that the signing of the deposition by the said witness was expressly waived.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this 11th day of May, 1976.

Arthur Mazlin

Arthur Mazlin

My commission expires

ARTHUR MAZLIN
[illegible]
78

what number it is.

MR. LOSQUADRO: Yes, your Honor.

(Plaintiff's Exhibits 1 through 7 received in evidence.) xxx

MR. BESHLIAN: Your Honor, I have the original of that deposition, if it would make it easier for you to read.

THE COURT: I would prefer that. Some day attorneys are going to start following the rule and file the originals, some day.

Off the record.

(Discussion off the record)

THE COURT: On the record. Call your first witness.

MR. LOSQUADRO: Your Honor, co-counsel with me is Mr. John D. Kimball, who will examine the first witness.

We call Mr. Kristiansen.

WALTER KRISTIANSEN, called as a witness by the Plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KIMBALL:

Q Would you state your address for the record, please?

A 151 Sanborn Street, Staten Island, New York.

Q By whom are you presently employed?

A Red Star Marine Services.

Q In what capacity are you employed by Red Star Marine Services?

A Vice president, operations.

Q How long have you held this position?

A Since August of 1973.

Q Does Red Star Marine Services have any relationship with Red Star Towing and Transportation Company?

A Yes.

Q What is that relationship?

A We provide management services for Red Star Towing and Transportation.

Q What is the nature of Red Star Towing's business presently?

A General tug boat operations on the Atlantic and Gulf Coasts.

Q Did they also engage in the same business in February of 1974?

A Yes, sir.

Q Can you tell us how many tug boats Red Star presently operates?

A At the present time, 13.

Q How about in February of 1974?

A Approximately 15.

Q 15?

A Yes, sir.

Q Do the tugs operated by Red Star Towing include a tug known as the Ocean Prince?

A Yes, sir.

Q Was this also true in February of 1974?

A Yes, sir.

Q What services does Red Star Marine provide for Red Star Towing?

A Sales operations, billing and some other accounting functions.

Q What would the operations functions include?

A The scheduling and booking of work, the efficient assignment of work to vessels, and posting and passing on completed job cards for accounting purposes.

Q Are these the only services that would be provided?

MR. SCHULMEISTERS: Objection, leading.

THE COURT: I will allow it. He wants to know whether you have anything to do with the assignment of personnel to the vessel.

A We also provide personnel services for Red Star Towing and Transportation.

Q Can you tell us what your duties as vice president of operations are?

A I oversee the administration of the dispatching department, I insure that the scheduling is reasonably efficient, and I do some quotations for customers.

Q Do your duties include any responsibility over the hiring of tug boat crews?

A Not directly.

Q Do you from time to time become involved in the hiring of tug boat crews?

A I will give advice to our personnel department regarding specific individuals and their qualifications, when it is brought to my attention, yes.

Q And this is a duty you perform in the normal course of your day as vice president of operations?

A Yes, sir.

Q Are you familiar with the procedures used by Red Star Marine for hiring tug boat crews?

A Yes, sir.

Q Can you describe those procedures for us?

A When a vacancy becomes available on a vessel, we telephone to the labor union hiring hall and make known that vacancy and ask them to refer applicants to us. At the same time, we will research our files, our personnel files, waiting lists of people who have applied for jobs, to discern if someone is qualified and available to be employed in that position. If the union is unable to come up with a satisfactory employee, then we will go to the waiting list held by the company.

Q Are there any other procedures by which a man could be hired as a tug boat navigator?

A No, sir.

Q Were these same procedures followed by Red Star Marine in January of 1973?

A Yes, sir.

Q Does Red Star Marine have requirements for the hiring of tug boat navigators?

A I am sorry, I don't understand the question.

Q Do you have any minimum requirements that an applicant must meet before you will hire him?

A Yes, sir. We require that they have minimum Coast Guard documents, that are required now by law, and that they have experience and a good reference from their former employer.

Q Did Red Star Marine have the same requirements in effect in January of 1973?

A Yes, sir.

THE COURT: Why do you use '73? This accident occurred in '74.

MR. KIMBALL: Your Honor, Mate Reimer was engaged by Red Star in January of 1973.

THE COURT: All right.

Q The next question was going to be whether the same requirements were in effect in February of 1974.

A Yes, sir, they were.

Q Do you know if the Coast Guard had licensing requirements for a tug boat such as the Ocean Prince in January of 1973?

A They did not.

Q Was there a licensing requirement in effect in February of 1974?

A There was none.

Q Is there a licensing requirement in effect today?

A Yes, there is.

Q If there was no licensing requirement by the Coast Guard in effect in January of 1973 or February of 1974, can you tell us why your company required that tug boat navigators have or obtain a Coast Guard license?

A It was our belief at the time that the taking of a minimum examination in the rules of the road would indicate to us a greater degree of qualifications on the part of individuals employed in the pilot house.

THE COURT: What was this license called that the Coast Guard issued to tug boat navigators?

THE WITNESS: Now, sir?

THE COURT: Then.

THE WITNESS: Then there wasn't one specifically. Generally at the time the men would take first-class pilot, uninspected vessels not over, say, 200 gross tons, and then a minimum stretch of waterway, and generally at that time it was Battery to Day's Point, approximately Weehawken, but that did require them to take a test on the rules of the road.

THE COURT: What is it now?

THE WITNESS: There are many of them. Generally they hold now operator licenses for uninspected vessels not over 200 gross tons.

Q In the years you have been associated with Red Star Marine, have you had occasion to come in contact with a large number of tug boat navigators?

A Yes, sir.

Q Based on your acquaintance with tug boat navigators, can you tell us where these people learned how to operate tug boats?

A On board the boat.

MR. SCHULMEISTERS: Objection, your Honor, hearsay.

THE COURT: Let me hear the question and answer.

(Record read)

THE COURT: I don't think the hearsay aspect is a problem, but I think the question is too broad. If you confine it to tug boat operators aboard the Red Star Towing vessels, I will allow it, and I take it that as to the Red Star Towing people they learned their navigation on board tugs, on-the-job training?

THE WITNESS: Yes, sir.

Q Can you tell us if in January of 1973 Red Star had any requirement that tug navigators have formal training in navigation, and by that I mean training they would receive in a navigation school of some type?

A We had no such requirement.

Q Are you familiar with the hiring practices of other tug boat companies that operate in New York Harbor?

MR. BESHLIAN: Objection, your Honor. I don't think it is relevant to the case.

THE COURT: Well, it would be relevant only if you people are going to argue that a standard of the trade was to afford some formal education which this particular line was not affording. I don't think you have raised that as an issue.

MR. BESHLIAN: It was not raised in the pretrial order.

MR. KIMBALL: The government raised it in their proposed findings of facts in that they alleged Mate Reimer did not have formal training in navigation.

THE COURT: Well, you can make that as a finding of fact. That is different from a finding that it was a standard of the trade and a custom of the profession, to afford formal training and that this line didn't.

MR. KIMBALL: Your Honor, I might add that I believe it is correct to say that the government is arguing that by virtue of Mate Reimer's lack of normal navigational education he was incompetent. I believe they argue that that is part of the circumstances which rendered him an incompetent man to navigate on that occasion. If I am incorrect --

MR. SCHULMEISTERS: I refer to the T.J. Hooper case --

MR. KIMBALL: That doesn't mean the standard in the industry is not relevant, does it?

THE COURT: I have doubts in my mind that this is going to be a relevant fact, but we lose nothing by letting him testify on it now and ultimately I will determine if it has any relevancy here.

Q The question was: are you familiar with the hiring practices of the other tug boat companies which hire in New York Harbor?

MR. BESHLIAN: If the witness is going to answer, I think counsel should elicit how he obtained the information.

THE COURT: Yes, he will have to tell us how he knows.

A We have very close relationships between the major companies within New York Harbor, including the personnel departments and even, I would say, particularly the personnel departments, and the reason for that is that there is a great deal of movement of personnel between the companies and we have frequent discussions between the departments, and I am familiar and it is basically the same procedure that Red Star follows.

THE COURT: It is not clear to me, however, whether we are talking about procedures prior to hiring or procedures after employment. You have said that you don't require your tug boat navigators to have any formal training, school training, before you hire them, and that you don't give them or send them to school after you hire them. I take it from your testimony you are saying that the other major companies, like Moran and McAllister, don't send their employees to school after they hire them, but how can you know whether or not in their employment practices they don't look for people who have had formal schooling before hiring?

THE WITNESS: I understood it to be about prior to hiring --

THE COURT: You were only talking prior to hiring?

THE WITNESS: Yes, that's all.

MR. KIMBALL: We are talking about requirements the company maintained for hiring, your Honor.

THE COURT: That leaves out an important element: do the major tug boat companies either require their employees after hiring to obtain formal training on their own or do they afford them certain formalized training at company expense, to your knowledge?

THE WITNESS: No company requires formal training beyond, to my knowledge, and none offers formal training after they are hired.

THE COURT: I think we ought to stop and consider what formal training is available. Obviously a person could attend either the National Maritime Academy at Kings Point or one of the state-run maritime schools and the Coast Guard, I believe, conducts certain courses, here and there, on navigation, and the Coast Guard Auxiliary also affords certain training. Are there any other formal training available anywhere in navigation?

THE WITNESS: Yes, sir, there are schools that have been set up by the Seamen's International Union, in Delaware, but there are a lot of problems involved with that, including the work schedules of the men, number one, and when you are talking about pre-employment, the difficulty of working with the union hiring halls.

THE COURT: I understand that the union sends you somebody who is ostensibly qualified and if you don't take him you have trouble with the union, but are there not a number of former sea-going mariners who have formal training at maritime academies who wish to get away from long overseas voyages and, therefore, prefer becoming tug boat people?

THE WITNESS: Yes, sir, there are a number of them. However, we have found in attempting to place them aboard tug boats that it is such an entirely different operation that we have had to require them to do a minimum of six months on deck in order to learn the ship handling characteristics with a tug and a barge either in tow or alongside or in front.

THE COURT: I can understand the handling of tugs is quite different from the navigating of an ocean-going vessel -- excuse me, from the operation of an ocean-going vessel, but I would think navigation, which is essentially determining where you are, would be the same on a tug as it is on any other vessel.

THE WITNESS: Navigation and piloting are the same whether at sea, on a big ship, or on a small ship.

MR. KIMBALL: Your Honor, we are not contending there are not schools available and that there were not schools available in January of 1973.

THE COURT: Your position is that in the industry, which you would take to be tug boats operating in the New York Harbor area and local waters, it was not a custom to require such formal training prior to hiring or to afford formal school-type training after hiring?

MR. KIMBALL: That's correct. The requirements in existence today, which are set by the Coast Guard, are quite different from those in existence in January, 1973, when Mate Reimer was hired, and in February, 1974, and I don't think that it is fair to apply present-day licensing requirements, let us say, to something which took place in 1973 or 1974.

THE COURT: I don't think anybody has argued that point, that you have to take current standards.

MR. BESHLIAN: I would like to renew my objection to the question proposed by Mr. Kimball, to the effect that Mr. Kristiansen has again not demonstrated a complete familiarity with the industry and he cannot know what goes on in offices of firms by which he has never been employed. I don't imagine that he, unless there is further testimony, has anything to do with respect to the contacts made with the personnel departments of other companies.

THE COURT: Bring that out on cross examination and if you wish to present a witness from some other company to testify to the contrary, I will have to accept it, since the issue has been raised.

Continue.

MR. KIMBALL: I would like to leave this subject and go on to another one, your Honor.

Q Are you acquainted with Walter Reimer?

A Yes, sir.

Q Did there come a time when Mr. Reimer was hired by Red Star Towing to serve on board tugs operated by it?

A Yes, sir.

Q Do you know when Mr. Reimer was first employed by Red Star?

A I have forgotten. I am sorry. I did know.

Q If you would like to look at any documents you have with you to refresh your recollection, you may do that.

A It would have been in January of 1973.

Q Can you tell us in what capacity Mr. Reimer was first engaged by Red Star?

A As a watch stander in the pilot house, as a mate.

Q As a mate?

A Yes, sir.

Q Can you tell us, are there any differences between the duties of a mate and the duties of a captain?

A Yes, sir, there are.

Q What are those differences?

A On tugs, mainly the captain is responsible for insuring that lines are ordered and the boat is ready to go and he also takes care of the paper work of the vessel.

Q And the functions of the mate would be the same, with the exception of those additional duties?

A With the exception of those additional duties, yes, sir.

Q Were you personally involved in the decision to hire Mr. Reimer?

A Very honestly, I don't remember. I have vague recollections at the time of being involved, but I can't remember anything specifically about it.

Q Do you recall who was in charge of personnel at the time Mr. Reimer was hired?

A That would have been Mr. George Rainer.

Q Is Mr. Rainer still employed by Red Star?

A He is not.

MR. KIMBALL: At this time, your Honor, I would like to have a document marked. We premarked yesterday Red Star 17, but I expect it would be appropriate to renumber--

THE COURT: I don't mind taking numbers out of order.

(Plaintiff's Exhibit 17 marked for identification.)

THE COURT: Is there any objection?

MR. KIMBALL: I was going to ask the witness if he could identify it.

Q Mr. Kristiansen, can you identify the document I have just handed you, marked as Red Star 17 for identification?

A Yes, sir. It is an employment card that is maintained in the personnel files of our company.

Q Do you know when this particular record was prepared?

A No, sir, I do not.

Q Is this a form that was used by Red Star in January of 1973?

A No, sir.

Q Was it in use in February of 1974?

A I am not sure.

Q Do you know when this card was filled in?

A No, sir, I don't.

Q Do you know whose handwriting is on the card?

A No, sir, I don't.

Q Is this a record kept in the normal course of business by Red Star?

A Yes, sir.

Q Can you tell us, was this document maintained in a personnel file for Mr. Reimer?

A Yes, sir, it was.

MR. KIMBALL: I would invite Mr. Schulmeisters to come forward and compare this with the original from the file. For the record, I would like to note that this document was marked at a deposition. We are submitting a Xerox copy of the original so that Red Star will be able to maintain a file on Mr. Reimer. The document we are submitting has been circled in different places with green pen and red pen and blue pen. The circling was done by Mr. Schulmeisters at the deposition of Mr. Kristiansen to identify the color ink which was on the card.

MR. SCHULMEISTERS: No objection.

xx (Plaintiff's Exhibit 17 received in evidence.)

MR. KIMBALL: To expedite matters, your Honor, I would like to ask the witness if he can identify a document premarked Red Star 18 for identification.

Q Can you identify that?

A Yes, I can.

Q Can you tell us what that document is?

A That is another employment card from our personnel files.

MR. KIMBALL: This document was also marked at the deposition of Mr. Kristiansen and is, again, a Xerox copy of the original. I would invite counsel to examine and compare it.

MR. SCHULMEISTERS: Your Honor, I seem to notice a difference here. On the document that was previously Xeroxed there seems to be an entry in the area "For Office Use Only" and the one that Mr. Kristiansen now has seems to have an entry --

MR. KIMBALL: You are looking at the wrong page.

MR. SCHULMEISTERS: I don't think so, your Honor, I think --

THE COURT: Hand it up to me.

MR. SCHULMEISTERS: I think they are obviously two different documents.

(Pause)

THE COURT: I will ask the witness, in an attempt to speed this up: you will note that at the time this picture was taken there were no entries in this section "For Office Use Only." Do you know when these entries were made?

THE WITNESS: It would have been after I gave my deposition. I took the originals back and gave them to the personnel department so they could maintain the files.

THE COURT: Do you know who made the additional entries?

THE WITNESS: Either Mr. James Caffentzis, the current personnel manager, or Robert Wolchik, the assistant personnel manager.

THE COURT You gave your deposition apparently in late 1976.

THE WITNESS: Yes.

THE COURT: Was Mr. Reimer still in your employ at that time?

THE WITNESS: No, sir.

THE COURT: Why did they bother making additional entries on the original card after he left the employment?

THE WITNESS: I don't know, sir.

THE COURT: I suggest that we work from the copy, which is being offered, which doesn't have those entries.

MR. SCHULMEISTERS: Since this has come up, I would like to have the other one marked A, both of them marked.

THE COURT: All right, the exhibit as it was as of the time of the deposition is received as 18 in evidence and then the original will be marked as 18A for identification.

xxx (Plaintiff's Exhibit 18 received in evidence.)

xxx (Plaintiff's Exhibit 18A marked for identification.)

THE COURT: It would seem to me, gentlemen, that the notations on the employment cards are secondary evidence and would only be of importance if there was a distinction between the experience of Reimer, as testified to in his deposition, and the experience of Reimer as set forth on the employment cards where Red Star might claim that the reasonbly believed he had experience, which in fact he did not have. Is that the case here?

MR. KIMBALL: No, it is not, your Honor.

THE COURT: Then I don't think it is very crucial, because Reimer testified on deposition as to what his experience was. That is the direct evidence of it. The employment entries are merely secondary evidence of it.

MR. KIMBALL: The reason we submitted the employment records was merely to confirm his deposition testimony.

THE COURT: I would assume the information on the cards was obtained from Reimer and has no greater weight than his testimony as to what he had.

THE WITNESS: That is not correct, because some of that information was gleaned by telephone calls to former employers.

THE COURT: Can you tell which was so obtained from the records?

THE WITNESS: Yes, I can.

MR. KIMBALL: This is something I intended to cover, your Honor. There are entries on the employment card as to his past experience and I was going to ask a series of questions on that.

THE COURT: Go ahead.

Q Please look at Red Star 17, on the back side. Can you tell us what is shown on the back side of that document?

A Yes, sir. Those would be -- the first three entries are companies that Mr. Reimer worked for prior to coming with us, with Red Star.

Q Did Red Star, in the normal course of operations check the references of respective employees?

A Yes, sir.

Q Was it customary for Red Star to make entries on employment cards listing the reference given to them by the respective applicant?

A Only if there was a derogatory reference.

Q I am not sure I understand your answer. Would Red Star receive a list of references from the applicant and then check those and would the derogatory comments be made only if derogatory information was received by the applicant?

A Yes, sir, that's correct.

Q I would ask you to look at Red Star 17 and tell us if there are any derogatory comments about Mate Reimer.

A I see none on there.

Q What would that indicate to you?

A That he got good references from these three former employers.

Q At the bottom of those three references, there is an additional notation. Can you tell us what that says?

A "14 October, '75, resigned, did not want to work north."

Q Do you know what that is a reference to?

A That was the date he left the employ of Red Star and the reason why he left the employ of Red Star.

Q In February of 1974 did Mate Reimer have a Coast Guard issued license to operate uninspected towing vessels under 200 tons?

A In May of 1974?

Q February of 1974, at the time of the incident we are litigating.

A I would like to see that other employment card, if I might, 18A, or something.

(Document handed to witness)

A According to this, he had an operator of uninspected towing vessels, certificate issued on June 12, 1973.

Q Can you state whether in the normal course of business Red Star Marine from time to time receives reports about its employees?

A Yes, sir, we do.

Q Would these reports come to your attention, as vice president of operations?

A Yes, sir, they would.

Q Would the reports include complaints about the performance of tug captains or mates?

A Yes, sir.

Q Can you tell us whether Red Star has at any time received any complaints about Mr. Reimer's performance as a navigator?

MR. SCHULMEISTERS: Your Honor, objection. This is irrelevant because obviously Mr. Reimer himself testified this is the first time he was in the Hudson River and the fact that he may have navigated elsewhere is irrelevant.

THE COURT: I agree it is very likely irrelevant, but I will allow it for the time being and evaluate it later.

MR. SCHULMEISTERS: It is also quite self-serving.

THE COURT: I don't think the absence of a report is self-serving. The presence of one would be the contrary, however.

MR. KIMBALL: We submit the absence of a report can be accepted as evidence to indicate the truth of something.

THE COURT: You may answer.

A What was the question?

(Question read)

A To the best of my knowledge, Red Star has not received complaints about Captain Reimer.

Q Has Red Star in the normal course of business received reports of casualties its tugs are involved in?

A Yes, sir.

Q Would these reports come to your attention, as vice president of operations?

A Yes, sir.

Q Did you receive a report about the casualty which is the subject of these proceedings?

A I must have. I don't remember it, but I must have.

Q Have you at any time received a report of any other casualty that Mate Reimer has been involved in?

A None that I can remember or find.

Q During the period of Mr. Reimer's employment by Red Star, did you receive any other reports about his performanc as a navigator?

MR. SCHULMEISTERS: Your Honor, objection. This is total hearsay.

THE COURT: Well, it is, but obviously if they had gotten reports which were bad, that would affect their reasonableness of continued employment of him and I don't know that the negative establishes anything that helps them, the fact that they had not heard anything. I will allow it.

A I had received favorable comments on the performance of the tug Ocean Prince while Mr. Reimer was employed about it.

Q Can you tell us from whom those favorable reports came?

A Persons employed by the Pittston Company.

THE COURT: Was he the captain of the vessel during this period, or the master of the vessel?

THE WITNESS: During which period?

THE COURT: During the period that Pittston spoke well of the operation of the tug Ocean Prince.

THE WITNESS: He served in both capacities.

THE COURT: Sometimes he was the mate and sometimes he was the master?

THE WITNESS: Yes, sir.

MR. SCHULMEISTERS: Your Honor, may we have the date on that and the area in which the tug operated? Once that comes out, the absolute irrelevance of it will show.

MR. KIMBALL: I think this is a subject of cross examination, your Honor.

THE COURT: Yes, I think you can bring it out on cross.

Q Based on the reports and other information you have received about Mate Reimer's performance as a navigator, do you feel able to state an opinion as to his competence as a navigator on tug captain?

MR. SCHULMEISTERS: Objection.

MR. BESHLIAN: Objection.

MR. KIMBALL: What is the nature of the objection?

MR. SCHULMEISTERS: He has not been established as a navigator and how can he pass on that?

THE COURT: Sustained. You have not established the witness' expertise sufficiently to allow him to express an opinion.

MR. KIMBALL: I believe the witness testified, your Honor, that he was the vice president of operations who had involvement in the hiring of tug boat personnel. I don't believe it is necessary to ask him about his own qualifications as a navigator, but I believe that in his position he would be able to state an opinion as to whether or not a man has performed competently and whether or not a man is a competent navigator.

THE COURT: You have not convinced me he has that expertise, but I will ask a few questions:

Have you ever served as a navigator yourself on a tug?

THE WITNESS: Yes, sir.

THE COURT: How long did you spend aboard tugs?

THE WITNESS: Two years as a deckhand and then on an

ATA for 22 months as navigator-first lieutenant.

THE COURT: Have you had any formal training besides that experience?

THE WITNESS: Navy OCS and I attended the Navy Rules of the Road School three years ago in Newport, Rhode Island.

THE COURT: I have now qualified the witness for you.

MR. BESHLIAN: There is an additional requirement, your Honor, as to whether the witness observed Mr. Reimer.

MR. KIMBALL: I asked the witness based on reports and information he received --

MR. BESHLIAN: I don't think that is sufficient to establish the qualifications of the navigator.

THE COURT: I believe that goes to the weight to be given to the testimony rather than its admissibility. It obviously would have much greater weight had the witness personally been aboard vessels with Mr. Reimer and observed him in operation. His second-hand evaluation has a much lesser value, but for whatever value it has, I will allow it.

MR. SCHULMEISTERS: I would just like to note my objection.

THE COURT: It is noted.

MR. BESHLIAN: If your Honor is going to allow the question, can we get some idea of the nature of the reports that would be the basis for this?

THE COURT: All right. First tell us what opinion you have formed -- I take it you never saw Mr. Reimer actually navigating a vessel?

THE WITNESS: I frequently go aboard boats and ride with people; I don't specifically remember Mr. Reimer.

THE COURT: First give us your opinion and then tell us on what basis you formed this opinion, on what reports and on what secondary evidence you reached your conclusion.

THE WITNESS: It was my opinion that Captain Reimer was an excellent boat man. The reasons for my conclusions are that he had, really, an excellent work history, a very good damage record, he was an excellent administrator of the crews. I have a personal opinion, also, that the more competent ship handlers tend to be the more competent when it comes to administrative work, and I do believe they go hand in hand. I had had a number of discussions with Mr. Jim Sanborn, who was vice president in 1973 with Pittston Marine regarding Mr. Reimer's performance and the performance of the tug while he was aboard and he was more than satisfied -- he indicated to me that he was more than satisfied with the vessel's performance.

Q Did you consider firing Mate Reimer because of the New London incident?

A Yes, sir, there was some discussion about that.

Q What did this discussion involve?

A Well, we decided not to take and fire him because a Coast Guard hearing was held in the case and he was not held --

MR. BESHLIAN: Objection.

MR. SCHULMEISTERS: Objection, your Honor.

THE COURT: Yes, sustained. A Coast Guard hearing was held, following which you did not discharge him?

THE WITNESS: Yes, sir.

MR. KIMBALL: The objection was to the answer, your Honor, not to the question and I think he should be entitled to give his answer --

THE COURT: I don't want to hear secondhand what the Coast Guard hearing determined. I am not sure it is even admissible firsthand. But there was a hearing, following which they did not discharge Mr. Reimer.

Q Do your duties include overall responsibility over the dispatchers employed by Red Star?

A Yes, sir.

Q Are you familiar with the factors the dispatchers consider when they are deciding whether to assign a specific tug to any given job?

A Yes, sir.

Q Can you tell us what the primary considerations would be in assigning a tug to a given job?

A Characteristics of the vessels to be towed, whether they are loaded or in light condition, characteristics of the tug boats that are available, horsepower, tidal and current conditions that would be encountered enroute and the crews who are on board in the pilot house.

Q At the time the Ocean Prince was assigned to tow the New London from Exxon refinery to Kingston, New York, did you have knowledge that the assignment was being made?

A No, sir. I believe that was a weekend and I was home.

Q When did you first become aware of the assignment of the Ocean Prince to the New London job?

A When I received a phone call sometime after the stranding, at home.

THE COURT: Do I take it that in making these assignments it is the characteristics of the vessel that controls and not the familiarity of the personnel with the waters?

THE WITNESS: They are all weighed, your Honor.

Q Do the services Red Star Marine provides to Red

Star Towing include the supplying of charts and other aids to navigation?

A Yes.

Q Can you describe for us the procedure by which charts are supplied to tugs?

A When it is determined by the people on board the vessel that a chart is required, they will take and call via the radio, the VHF radio, to the dispatcher and then use one of the dispatching assistants to go to the Hammond Map Store, two city blocks away, obtain that chart and make arrangements to get it on board the vessel. Usually it is accomplished in the matter of an hour.

Q Do the captain's duties include determining whether or not a vessel is fully equipped with charts for a given job?

A Yes, sir.

Q Is it known to the tug boat captains in the Red Star organization that this is part of their duties?

A Yes, sir.

MR. SCHULMEISTERS: Object, your Honor. I think we are getting awful leading on this.

THE COURT: Yes.

MR. KIMBALL: Your Honor, I have no further questions at this time.

THE COURT: What order will we take for cross examination, or do you wish to vary it, witness to witness?

MR. BESHLIAN: It makes no difference to me, your Honor, any order Mr. Schulmeisters wants.

(Pause)

CROSS EXAMINATION

BY MR. SCHULMEISTERS:

Q Mr. Kristiansen, the assignments on the various voyages are made by dispatchers, you testified. Do the dispatchers have access to the personnel cards?

A No, sir.

Q So a dispatcher would not know the qualifications a man does or does not have?

A That is not true.

Q But he doesn't have a record to look up to see what license he has?

A He might not know the particular document an individual is holding, but that document is only part of the qualifications.

Q I think you mentioned that in 1973 there was no requirement for any kind of a license, and then there came a time that operators' licenses were required?

A There was no requirement by the government. The company had a requirement for a license.

Q Did there come a time when there was a requirement by the government?

A Yes, sir.

Q Approximately when was that?

A July of 1974 -- June, July, I don't remember specifically.

Q Wasn't it somewheres around the time of July, 1973, for the uninspected vessels?

A I honestly don't remember.

Q Do you recall whether when the requirement came out whether there was a grace period during which licenses were given on the basis of prior experience, without the tests?

MR. KIMBALL: I object to this, your Honor. The deposition of Mate Reimer would show he was licensed in the year 1973 and I don't see the relevance of the questions.

THE COURT: If in fact the man was licensed, why is it relevant?

MR. SCHULMEISTERS: Frankly, your Honor, it is my understanding he received it the first time it came out under the grandfather clause without an examination.

MR. LOSQUADRO: There is no way this man could testify to that, your Honor.

THE COURT: Do you have any knowledge as to how

Reimer obtained his license?

THE WITNESS: No, sir.

Q Did you ask him?

A No, I didn't.

Q Was it the policy in the company to ask him?

A Yes, sir.

Q Also I think you mentioned that these examinations included the rules of the road, is that correct?

A Coast Guard examinations for deck officer licenses include questions on the rules of the road, yes.

Q For the uninspected vessels, you do not have any navigations questions there, is that correct?

A I am not sure what is required.

MR. KIMBALL: Your Honor, I object to this. I would suggest that if Mr. Schulmeisters is going to make statements on the record of this nature that he at some point in time at least make available to us facts which would back up his gratuitous remarks.

THE COURT: Do the Coast Guard regulations with respect to licensing set forth the nature of the qualifications required?

MR. SCHULMEISTERS: Yes, there are some in the CFR, and for uninspected vessels they are quite minimal.

THE COURT: Do you have them as of February of 1974?

MR. SCHULMEISTERS: I don't have them handy, your Honor.

THE COURT: I think they ought to be submitted, if they are available.

Q You mentioned that you were in the Navy and went to an OCS school?

A Yes.

Q You took some navigation there?

A Yes, sir. A good part of the curriculum, 16 weeks, was in navigation.

Q What books did you use?

A Knight's Modern Seamanship and Bowditch.

Q How about Dutton's?

A That was also used.

THE COURT: That is seamanship?

MR. SCHULMEISTERS: Knight's Seamanship, your Honor.

Q Were you taught what a danger bearing is?

A No, sir.

Q Would you recognize Bowditch, if I showed it to you?

A Yes, sir.

MR. KIMBALL: I object to this line of questioning, your Honor. He is going to ask the witness numerous questions about navigation on the night in question, obviously, and I don't think this witness should be subjected to that.

THE COURT: You opened the door to it by qualifying him as an expert on the navigational capabilities of Mr. Reimer.

MR. KIMBALL: I never qualified the witness as an expert on navigation. I asked if he had received reports which would enable him to state an opinion as to Mate Reimer's qualifications as a navigator. If Mr. Schulmeisters wants to qualify him as an expert on navigation, he can certainly do that, but the thought is that --

THE COURT: I think the two areas are closely enough allied to allow cross examination along this line.

MR. SCHULMEISTERS: May I have my last question read back?

(Question read)

Q Let me show you HO publication No. 9, commonly referred to as Bowditch, is it not?

A This is not the book that I used as Bowditch.

Q Do you recognize this?

A I have never seen it before. It says "Bowditch."

Q Would you look through it and see if you recognize anything that may be similar to the Bowditch you used to use?

A If you are asking me to testify as to particular paragraphs, I don't know, you know, it was 14 years ago I was going through OCS and using that book. There are things here I recognize regarding navigation.

MR. KIMBALL: Your Honor, if it will speed things up, we will agree that Bowditch has a recognized treatise on navigation, but Mr. Kristiansen's education involved a different book.

THE COURT: You are trying to get at that Con Hook Light could have been used as a danger bearing, but having established that, what can this witness tell you about that?

MR. SCHULMEISTERS: The next question was, obviously, whether he would require his navigators to know what a danger bearing is.

THE COURT: My quick impressions is that Con Hook is not that good a danger bearing because what would be a safe bearing a little further south in the river isn't a safe bearing as you get further up the river, and you consequently have to know your latitude to know what a safe bearing is on Con Hook Light.

MR. SCHULMEISTERS: Just coincidentally, I think page 255 of Bowditch gives an illustration that is very similar to the Con Hook situation.

MR. KIMBALL: I insist if he is going to ask questions about Con Hook that he qualify his questions by attempting to establish the conditions which existed that night, including the fact that Mate Reimer testified that he did not see the light.

MR. SCHULMEISTERS: He did not testify he did not see it, your Honor. He testified, "I did not notice it," and his mate, Kiernan, testified he saw it right away --

MR. LOSQUADRO: Your Honor, this is going too far, as far as objections are concerned --

THE COURT: Yes. Put another question.

Q Would you require your navigators to know what a danger bearing is?

MR. KIMBALL: I don't know how the witness can answer this. He testified he doesn't know what a danger bearing is.

THE COURT: Well, read that now.

(Pause)

A It would be good to know, but there are a number of factors that become involved.

Q Would you agree with me that it would be a good idea for a tug's navigator to know what a danger bearing is?

A It would be good to know, I suppose.

MR. KIMBALL: While we are on the subject, I might ask Mr. Schulmeisters if the Coast Guard had a requirement that navigators know what a danger bearing is.

THE COURT: Mr. Schulmeisters is not the witness. You will have to put Coast Guard officers on and they will have to testify in that regard.

MR. SCHULMEISTERS: I do not propose to put into evidence the whole Bowditch, your Honor, but I would like to put in the relevant pages which talk about a danger bearing.

THE COURT: All right. It is acknowledged to be a standard treatise, I take it?

MR. KIMBALL: We recognize that, your Honor.

THE COURT: You are offering?

MR. SCHULMEISTERS: Pages 255 to 256.

MR. KIMBALL: Will you identify the year and volume?

MR. SCHULMEISTERS: The 1968 edition of Bowditch. I think there is an edition coming out this year --

MR. LOSQUADRO: Is that the most current edition, do you know?

MR. SCHULMEISTERS: The present one is published in two parts and part one came out last year and I think this year part two is coming out. So that one I think is the most recent one that was in effect in 1974.

THE COURT: What pages are you offering?

MR. LOSQUADRO: Have you established that, that that is the most current on the pages you are offering?

MR. SCHULMEISTERS: As far as I know, I think it is.

MR. LOSQUADRO: "As far as I know" is not enough, your Honor. We have to know if this is the most current.

THE COURT: We will take it subject to subsequent questioning to determine whether there was another issue of Bowditch out before 1974 and, if so, we will eliminate it and take the current edition.

MR. KIMBALL: Who should we address those questions to, your Honor?

THE COURT: I would say almost any knowledgeable mariner who appears as a witness should know, but certainly the Coast Guard officers should know.

MR. SCHULMEISTERS: I can make a telephone call and check it out exactly.

THE COURT: What pages are those?

MR. SCHULMEISTERS: 255 and 256.

THE COURT: I would be very surprised if there was any change in the definition of a danger bearing.

(Government's Exhibit BB received in evidence.)

THE COURT: Off the record.

(Discussion off the record)

Q Mr. Kristiansen, where was the tug just before she went to pick upthe barge New London?

MR. KIMBALL: Objection. He has not established Mr. Kristiansen knows the details of the incident.

THE COURT: If he doesn't, he will tell us.

Q I show you Exhibit 6. Do you recognize that as a document of Red Star?

A Yes, I do.

Q Would you please turn to the page for February 2nd and can you tell me where the tug was before she went to pick up the New London?

A It was at a place called Bushey's Yard -- excuse me -- yes, Bushey's Yard.

Q Is there any relationship between Red Star and Bushey Yard, or the company that runs the Bushey Yard?

MR. KIMBALL: Your Honor, I object on the grounds that it is irrelevant.

THE COURT: Where are we going with this?

MR. SCHULMEISTERS: May I approach the bench with counsel, out of the hearing of the witness?

THE COURT: Yes.

(At the side bar)

MR. SCHULMEISTERS: As your Honor knows, I have made reference to one case in my brief which is U.S. against Bushey, which deals with many pollution incidents and an injunction against that and related companies with respect to manning --

MR. LOSQUADRO: Manning of tank barges by tankermen in Vermont?

MR. SCHULMEISTERS: Yes.

My position is that basically these are related companies and the procedure criticized there as lackadaisical and dangerous to the environment is just continuing here.

MR. LOSQUADRO: I strongly object.

MR. SCHULMEISTERS: There is a relationship between those companies.

THE COURT: I think the argument is a bit attenuated, but we don't have to reach it at this point. I will allow the witness to testify as to the relationship between the companies, and leave it there.

(In open court)

MR. SCHULMEISTERS: I will rephrase the question.

Q Is the Bushey Yard in Brooklyn related in any way to the Red Star Company?

A Yes.

Q It is basically the same ownership?

A Yes.

Q Is Mr. Frank Bushey a principal?

A He is one of the principals.

Q And the correct name of the company is Ira S. Bushey and Sons, Inc.?

A Yes.

Q And that company runs a number of barges and tugs?

A No, I don't believe Ira S. Bushey and Sons runs boats.

Q Is Spentonbush, S-p-e-n-t-o-n-b-u-s-h, a related company?

A Yes.

Q That is engaged in the carriage of oil?

A Among other products, yes.

Q So all these companies are related companies?

A Yes.

Q And the dispatchers work out of the office at 500 Fifth Avenue?

MR. KIMBALL: The dispatchers of what company?

MR. SCHULMEISTERS: The ones that operate the tugs and barges.

A The dispatchers of Red Star and the dispatchers of Spentonbush are both at 500 Fifth Avenue.

Q And they were so in 1974, right?

A Yes.

Q And the Bushey Yard is one where repairs are done to the barges and tug boats, is that correct?

A Yes.

THE COURT: Incidentally, nobody asked you, and maybe you don't know, but when the dispatcher sent the tug Ocean Prince out to pick up the New London, who did the dispatcher believe was the captain and who did it believe was the mate?

THE WITNESS: I had a discussion with the dispatcher --

MR. KIMBALL: Your Honor, I think you should first ask him if he feels qualified to answer that.

THE COURT: If you know.

THE WITNESS: I had a discussion with the dispatcher and he told me who he thought the dispatcher was and who the mate was and this discussion took place about a month ago.

THE COURT: Is the dispatcher going to be a witness here?

MR. KIMBALL: He was never asked to give testimony and was not requested by anybody.

THE COURT: Subject to striking it on a hearsay basis, what did the dispatcher tell you as to who he believed was the master of the tug on this voyage?

THE WITNESS: He believed John Kiernan was the master.

THE COURT: How does your company determine when they have two mates aboard which one of them will be the captain?

THE WITNESS: The personnel department will make a specific assignment as to who is captain and who is mate, but if there are two mates aboard, generally we don't designate one of the two mates as captains. Generally we try to have an individual who normally fills a captain's job on the boat.

THE COURT: In this instance were both the persons mates?

THE WITNESS: No, they were not.

THE COURT: They were both captains?

THE WITNESS: They had both served as captains, yes, sir.

THE COURT: You don't have any order of priority within the company which would determine which of the two would serve as captain, it requires a personnel designation, in this instance?

THE WITNESS: It requires a personnel designation. For example, if someone got off and it was that individual who was the captain or the mate, "Let's try to fill it with a captain from somewhere else."

THE COURT: How long had both Kiernan and Reimer been aboard the tug Ocean Prince prior to this event?

THE WITNESS: I don't recall.

THE COURT: Was it a short period of time or long period of time?

THE WITNESS: Reimer had been assigned there for quite awhile, although I understand he had just come back from some time off shortly prior to the accident.

MR. LOSQUADRO: The evidence will show, the testimony handed you already and the testimony by Captain Kiernan this afternoon, that Mate Reimer was on board the tug Ocean Prince for about a year and a half full time with the exception of one trip he made on the Crusader, another Red Star tug, and Captain Kiernan was on the Ocean Prince since February 1st as a relief man.

THE COURT: What it really comes down to was the person he relieved serving as captain at the time he relieved him?

MR. LOSQUADRO: You will also hear testimony that when Kiernan joined the boat on February 1st, Reimer was on his time off and Kiernan will tell you who was on board.

THE COURT: The net effect of this is to create some uncertainty as to which one of the two of them were supposed to be the captain?

MR. LOSQUADRO: Each man stands his own watch, their watches do not overlap and it is not that significant a factor, except for ordering supplies. Captain Kiernan did sign the log books and was paid captain's wages and Reimer was paid mate's wages.

THE COURT: We will take a brief recess now.

(Recess)

THE COURT: Continue.

BY MR. SCHULMEISTERS:

Q Is Diesel Vessel Operators also a related company?

A Yes, sir.

Q Did Red Star have any instructions that they sent to their tugs?

A No.

Q Did any office personnel go on the tugs to check what charts they had on board?

A Specifically for that purpose, no.

Q Did Red Star ever go aboard to check whether Light Lists or Coast Pilots were on board?

A No, sir.

Q What is a Light List?

A A Light List is a government publication which lists the characteristics of various aids to navigation found in the navigable waters of the United States.

Q What is a Coast Pilot?

A A Coast Pilot would give directions and describe local characteristics of harbors and significant landmarks, describe docks, berths, water available.

Q To whom did Red Star send the Notices to Mariners?

A To captains.

Q To their homes?

A Yes, sir.

Q Neither Mr. Reimer nor Mr. Kiernan were the permanent captain aboard the Ocean Prince, is that correct?

A I know Mr. Kiernan wasn't. I don't know if Mr. Reimer was the individual that they would have sent the local Notices to Mariners.

Q Do you recall that you testified before on deposition?

A Yes.

Q Let me show you this deposition and ask you if you recognize having read it and signed that deposition and, for the record, the deposition was taken on December 22, 1976.

A Mr. Reimer is not listed as being one of the captains of the Ocean Prince.

Q You are referring to page?

A 57.

Q This was information you obtained upon my request and filled in when you signed the deposition?

A Yes, sir, but this information was taken from the payroll logs for that brief period surrounding the accident. That doesn't mean to say that Captain Reimer, let's say, in December of the year wasn't getting these things as a matter of routine. I was not in personnel or mailing them out at the time.

MR. SCHULMEISTERS: I would like to mark that deposition as CC for identification.

MR. KIMBALL: The entire deposition or just the page?

MR. SCHULMEISTERS: The entire deposition.

xxx (Government's Exhibit CC marked for identification.)

Q At the time when you testified at the deposition, were you that surprised that Mr. Kiernan thought he was the mate on the tug?

A Yes, I was.

Q Tell me, does Red Star give any instructions as to how watches are to be stood on tug boats?

A We have no written instructions.

Q Were you aware that quite often the lookout -- strike that -- were you aware quite often that the deckhand leaves the wheelhouse?

A Yes.

Q Were you aware of that in 1974?

A Yes.

Q Were you aware --

THE COURT: Nobody has moved to exclude witnesses and I am not suggesting you necessarily want to do it, but, to some degree, this witness' testimony will cover some of the ground covered by Mr. Kiernan and I take it Mr. Kiernan is present in the courtroom now?

MR. KIMBALL: Yes, your Honor.

MR. SCHULMEISTERS: Your Honor, this is for a different purpose.

THE COURT: If you don't want witnesses excluded, that is fine by me. I take it you do not wish either excluded?

MR. SCHULMEISTERS: I don't think there is any need for it, your Honor.

THE COURT: All right.

Q Do the deckhands also have other duties on tugs?

A Yes.

Q Would you list me some of those duties they have?

A Proper securing of lines and tows, making up tows, maintenance of the vessel --

Q What do you mean by maintenance?

A Chipping and painting, general housekeeping, and lookout duties.

Q And general housekeeping, that includes what?

A Cleaning the head, polishing the brass, washing the windows.

Q Was this also a procedure known to you in 1974?

A Yes.

Q For how long had you known that procedure?

A Since I had first stepped foot on a tug boat.

Q Approximately when was that?

A 1945.

Q On the Ocean Prince, what constituted the navigating crew?

A The captain, or the individual on watch -- for lack of a better term, the officer on the deck.

Q Just by himself, right?

A Yes, sir.

Q The deckhand would be sent on all sorts of chores, or whatever the captain thought was necessary?

A He would be assigned duties at a particular time the captain felt it was the important duty for him to perform at that time.

Q And getting coffee would be one of those duties?

A Coffee, getting coffee for the man in the wheelhouse, is something the deckhands do, yes.

Q While the deckhand is getting the coffee, the man in the wheelhouse is all by himself, is that correct?

A Frequently, yes.

THE COURT: When the navigator is at the wheel, how can he take sightings and mark positions on charts?

THE WITNESS: They don't.

THE COURT: Do they ever have the deckhand take over the wheel if they want to take some sights and chart their position?

THE WITNESS: Yes, sir.

Q You mentioned that you had received many good reports about Mr. Reimer. Is it not a fact that you were basicall interested in the efficiency of the operation of the tug?

A Primarily, yes.

Q And that is basically what you were concerned with when you were receiving these reports?

A Efficiency to me also includes safety.

Q Do you have the personnel card in front of you, sir?

A Which one?

Q This one here (indicating). You look at the original card and I will look at the exhibit. Does the personnel card, which is Exhibit 17, show when Mr. Reimer received his license?

A No, it doesn't.

Q Do you see the upper right-hand side, on the front, where it says "For Office Use Only"?

A Right.

Q Would you read that entry, please?

A It is either an initial or a star of some sort and it says, "April. Operator inlands," and in a different color, "Operator, 200 miles." Then another entry below that.

Q What is the entry below that?

A "Failed for oceans 200."

Q Is there any difference between a license for oceans 200 and inland 200?

A Yes.

Q What is the difference, if you know?

A Among other things, it would be knowledge of international rules of the road and celestial navigation.

Q Wouldn't it also have more navigation?

A To me navigation means upon oceans. When one is entering a harbor and going up rivers, that is called piloting. So there would be more questions and navigation on oceans 200 and more questions and piloting for inland.

THE COURT: Where do you put coastwise navigation in that nomenclature?

THE WITNESS: The distinction, your Honor, the Coast Guard makes -- there are three licenses; operator inland, operator oceans not more than 200 miles offshore, and operator oceans unlimited. The questions in each would be geared to -- if you are going down the coast you pilot using fixed points along the shore and the Coast Guard, I assume, would gear their questions regarding navigation accordingly.

THE COURT: Did he have a license for coastwide navigation up to 200 miles?

THE WITNESS: Eventually -- there is one "Operator up to 200 miles."

THE COURT: You don't know when he got that?

THE WITNESS: No, sir, I don't. There are licenses around and it should be on there with an endorsement.

MR. LOSQUADRO: Your Honor, may we see his license?

THE COURT: The license in evidence as Exhibit 1 is "Oceans not more than 200 miles offshore and the inland waters." It is dated June 12, 1973, which is more than a year -- well, less than a year, but prior to the incident. So he apparently got his offshore up to 200 license before this incident.

MR. LOSQUADRO: There are endorsements on the reverse side of that as to the western rivers and Great Lakes.

THE COURT: He is an operator on western rivers and a second class operator, uninspected vessels, on the Great Lakes.

MR. LOSQUADRO: Your Honor, I don't think there is any dispute, and I don't know if you know, but a tug boat under 200 tons is an uninspected vessel.

THE COURT: Yes. That was a point made in your trial brief, in response to the government's apparent contention that it required a pilot.

MR LOSQUADRO: Well, the absence of pilotage requirements is not because it is an uninspected vessel, it is because it is not a foreign flag vessel or a U.S. enrolled vessel in foreign trade.

MR. SCHULMEISTERS: And also with respect to tonnage.

Q Do any of the tug captains in Red Star have pilots licenses for the Hudson River?

A Well, each man, the documents they hold, the Coast Guard has now come out in vessels under 1600 gross tons and said if you hold a valid master's and mate's license you are considered to be qualified to be a pilot for the vessel in which you are enrolled.

Q My question is: do any of your mates or captains in Red Star have pilotage endorsements for the Hudson River?

A Three people do.

Q Would you think it would be a good idea to have such an endorsement for a man going up the Hudson?

A Why should we just limit it to the Hudson, why not say they should have pilotage for every river or creek they ever go into? I wouldn't say it would be a good idea. If they are qualified --

THE COURT: Let me ask you a different question: considering the weather conditions existing at the time and the fact that it was a nighttime job, would it be desirable to have aboard the Ocean Prince one of your three Hudson River pilots?

THE WITNESS: No, sir, because we had Captain Kiernan aboard, who had made the trip a number of times and although he didn't have a document, he was well qualified to do it.

Q Was it known to you that Captain Kiernan would stand six hours and then he would go off the wheelhouse and Mr. Reimer would stand the next six hours?

A That was the watch schedule, that's correct.

Q So you did not expect Captain Kiernan to be on the wheelhouse during the time that Mr. Reimer was up there?

A If you are talking about this particular incident, as I said, I didn't even know the boat was being assigned at the time to that towage.

Q Do you think it would have been a good idea for the dispatcher to have considered the experience of Mr. Reimer?

MR. KIMBALL: I object. I think the witness testified the dispatchers do consider the experience of the tug captain and mate --

THE COURT: He did, but the question as it is being asked ~~is~~ should your dispatcher in considering this particular voyage have given any consideration to the fact that half the shifts would have been stood by someone unfamiliar with the Hudson River.

THE WITNESS: They should have considered it and he did consider it.

MR. KIMBALL: Your Honor, I would like to add that when you read Reimer's deposition you will note that he had been up the Hudson River, he was not unfamiliar with the river. It is true that he stated he had not been up as a navigator, but he did have experience on the river.

MR. SCHULMEISTERS: Why don't you add "as a deckhand"?

MR. KIMBALL: I believe the deposition will speak for itself.

Q Would you please turn to page 47 of your deposition? Were you asked these questions and did you give these answers, page 47, line 6:

"Q Would it have been a good idea for Mr. Keenan to have inquired with respect to this particular experience of Mr. Reimer in directing that tug to go there?

"A You are asking me to make a decision after certain facts are known.

"Q You are the vice president of operations, are you not?

"A I am.

"Q And you were at that time?

"A I was.

"Q Can you please answer that question?"

Then the reporter read back the pending question and there was an objection from Mr. Kimball, and then colloquy, and page 48:

"Q Is this within the practice of Red Star Marine Services and Red Star Towing and Transportation? Can you please answer that question?

"MR. KIMBALL: Do you think you can answer the question?

"A It would certainly have been prudent for Mr. Keenan to take into consideration the relative experience of the total pilot house, but to specifically inquire prior to the voyage regarding what the men felt their abilities to be would be a judgment that Mr. Keenan is authorized to make.

"Q And I guess Mr. Keenan was authorized to make this judgment in his capacity as a dispatcher?

"A He was.

"Q And as a dispatcher within the operations department?

"A That's correct.

"Q And this is authority that you as vice president "concurred that he has?

"A That's correct."

Were those questions asked and did you give those answers?

A Yes.

Q Were they true?

A Yes.

MR. KIMBALL: Your Honor, I would like to note that the objections I made at the time the testimony was taken should be renewed.

THE COURT: I didn't hear them read as you went through it.

MR. KIMBALL: He stated I objected, and I objected on the ground that the witness was not able to say what Mr. Keenan, K-e-e-n-a-n, the dispatcher --

Q Who was Mr. Keenan, K e-e-n-a-n?

A He was and is a dispatcher for Red Star.

Q He was the dispatcher who sent the Ocean Prince on this voyage?

A He gave the orders.

Q Did Red Star ever give an examination or make any kind of a test as to the proficiency in navigation when hiring a tug boat mate or captain?

A No. That was done by the Coast Guard, when they got their licenses.

Q Did Red Star ever check into what the questions were which were asked by the Coast Guard when a man got his license?

A We generally know the questions put to the men.

Q Did Red Star ever attempt to ascertain or get copies of specimen examinations for the various licenses that most of its mates and captains have?

A No, we didn't. We did have some input, however, when they were drafting the examination for operator, and we gave some inputs on sample questions, but we don't know what specifically came out.

Q To whom did you give the input?

A To the Coast Guard licensing section.

Q Did you do this personally?

A I don't specifically remember if I was the individual who handed it over or if it was somebody else.

Q What was the input?

A Just recommendations on areas to be examined.

Q Such as?

A Lights towing vessels are required to have, configurations of tows, day shapes and things like that.

Q Did you make recommendations as to plotting courses on charts?

A I don't remember.

Q Would it be reasonable to assume if you have one mate who is steering the tug that he at the same time can't plot on a chart?

THE COURT: I think he has already testified to that, that you cannot handle the wheel and plot at the same time.

A You cannot do it.

MR. SCHULMEISTERS: This was in connection with the question of whether they suggested input to the Coast Guard as to requirements for plotting.

I have no further questions.

On my case I might wish to put in portions of his deposition, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. BESHLIAN:

Q Were you in any way consulted when Mr. Reimer was first employed by Red Star Marine Services for services aboard a Red Star towing tug?

A I have vague recollections of being involved, yes. I don't remember specifics.

Q Can you tell me why, in what respect you may have been consulted?

A I had been personnel manager for Red Star and a couple of affiliated companies for over three years and I had subsequently been moved to another position, but the individual who had been my assistant had been promoted, and based on the knowledge I gained during that period of time there was frequent consultation between us regarding the qualifications.

Q Was Mr. Reimer contacted for a specific job or for a specific reason?

A He would have been contacted for a specific job, yes.

Q Do you know from looking at Exhibit 17 -- I believe you may have it in front of you and that is the employment card -- does that card indicate the manner in which the original application was made?

A No, it doesn't.

Q Is that Exhibit 17 or 18?

A 18.

THE COURT: Do you want 17?

MR. BESHLIAN: Yes, sir.

A No, it doesn't.

Q Do you know the manner in which Mr. Reimer was reached or contacted when he made application for the job?

A No, I don't.

Q Would it surprise you that he was reached on the telephone?

A Not at all.

Q And that the information obtained, or apparently obtained on this card, was given to whoever contacted him over the telephone?

A That is quite common.

Q That would be one of the methods in which an employee would be hired by Red Star?

A This particular employee lives in Jacksonville, Florida.

Q I notice in looking at the back of the card that his references are Pauling Brothers, four years as an AB, and that is the bottom of the line, the next is Whiteback, four months, mate, Jacksonville to San Juan, and the next one, the top, is Gulf Atlantic Towing Company, three and a half years, Gulf Ports to San Juan, is that correct?

A That is what is written there.

Q Would you have contacted his prior employers to determine his experience in the areas he was navigating or claimed to be navigating?

A I wouldn't have done it at this point of time. Someone in our organization would have.

Q You mentioned Mr. Sanborn was satisfied with the

Ocean Prince's operation and I think you included Mr. Reimer in that report. Can you tell me what operation was in progress when this complement was elicited from Pittston?

A Towage of the barge Nassau.

Q Where was the Nassau operating at that time?

A From Port Arthur, Texas, to Tampa, Florida, to Miami, Florida, to Jacksonville, Florida, and occasional ports of call at Cape Canaveral.

Q Was the Ocean Prince and the Nassau operated as a unit at that time?

A It was.

Q Did it leave New York to go to the southern waters as a unit?

A I believe so, yes.

Q Did Mr. Reimer take it down south when it went to the southern waters?

A I don't remember.

Q Do you know when it went south?

A I don't specifically remember, no.

Q Would it be possible Mr. Reimer was contacted and hired because of his experience in southern waters for a position on the Ocean Prince that was going to be operated in the southern waters?

A No, he wouldn't have been initially contacted because of that, no.

Q But he would have been assigned because of this experience?

A It would have helped in his employment. I would guess a vacancy occurred on the Ocean Prince and we were looking to someone to fill the vancancy.

Q Can you tell me how long the Ocean Prince operated down south?

A At least 18 months, if not longer.

Q Was Mr. Reimer on the boat at that time?

A He was.

Q In addition to the Nassau, did it move any other barge when Mr. Reimer was aboard?

A It did.

Q What was the name of that barge?

A The Elmoro.

Q Basically, what was the voyages upon which the Elmoro was moved by the Ocean Prince?

A Ports between Puerto Rico and the U.S. Southern Atlantic Gulf Coasts.

Q Did the vessel remain in the southern waters basically all the time Mr. Reimer was aboard?

A Most of the time, yes.

Q I know we have not had the opportunity of your hearing the testimony, but the deposition which was marked as an exhibit by plaintiff's counsel indicates Mr. Reimer came north on the Ocean Prince and left the Ocean Prince in Philadelphia sometime towards the end of November --

MR. LOSQUADRO: If you are going to refer to the testimony, the record should be complete that he also testified in addition to that he served on the Crusader going to Boston and Providence and he has been up and down the coast quite a bit.

MR. BESHLIAN: I believe he restricted that service on the Crusader to a period of three to four weeks.

THE COURT: In any event, let's move on.

Q He also testified that he returned to the vessel on February 2nd, and this was the first time he had returned to the vessel after leaving it in November of 1972. I give you this as a foreground, Mr. Kristiansen, because you stated that the dispatchers in considering the assignment of vessels considered the men's experience and knew their experience from contacts with them. I assume these contacts were made over the radio?

A Yes.

Q What were the nature of the contacts when they talked to the tug?

A Ship's position, ship's movement, problems that occurred.

Q Would it be a direction to take vessel to such and such a place or pick up a vessel?

A Yes.

Q Vessels such as the Nassau and Ocean Prince moving as a unit, was a dispatcher involved in contact with that vessel?

A At times, yes.

Q Was it frequent contact?

A Yes.

Q How often, would you say?

A Once a day.

Q At least once a day. That would be with respect to what, sir?

A The operation of the vessel.

Q When you say the operation, what specific phase of operation, ETA's?

A Yes, speed of advance, weather conditions, problems with machinery, assistance that they would require, and so on, many others.

Q That could be any one of the dispatchers employed by the company at that time?

A Yes.

Q How many dispatchers were employed at that time?

A Five.

Q Five for Red Star's work alone?

A Yes.

Q Did they rotate in their assignments?

A Yes.

Q So that it would be any one of the five who could have contacted them at any particular time?

A Yes.

Q So that one may not have had too many contacts with the vessel itself?

A He would have one-fifth of the contact.

Q Possibly?

A Probably.

Q All the experience the dispatcher would have available to him would be through these radio contacts?

A Primarily.

Q Would Mr. Keenan, the dispatcher, would his contacts have been with Mr. Reimer primarily when he was in southern waters?

A Primarily.

Q As I understand it, there is no way that the dispatcher has access to the personnel records to determine a man's experience with respect to the waters that he is then navigating.

A He can't get to the personnel records.

Q So that when the dispatcher designated the Ocean Prince to tow the barge New London on February 2nd, on the morning of February 2, 1974, the greatest amount of information available to him would have been his contacts with Mr. Reimer when he was operating the Ocean Prince in the southern waters?

A With regard to Mr. Reimer, but that was only half of the thing that he was facing.

Q Just Mr. Reimer?

A Yes.

Q Would he have known whether Mr. Reimer had any experience in the Hudson River?

A He may have.

Q Would he have known whether Mr. Reimer had any experience in the Hudson River as a navigator?

A He may have. I don't know.

Q You don't know whether he would or wouldn't?

A No.

Q There is nothing in the record, in your personnel records, which would indicate Mr. Reimer had ever navigated the Hudson River?

A No, but there are other contacts that happen with the boats, people calling in for crews, there will be a great deal of discourse between the dispatcher and the employees, and they gain knowledge --

Q Isn't it a criteria of radio operation to keep your messages at a minimum so you don't clog the airways with general conversation?

A We would like that, but we don't get it.

Q It would be good practice to restrict most of the messages to the specifics required for the vessel underway?

A That would be good practice, but it was not common practice.

Q You stated before that Mr. Kiernan was the designated captain of the Ocean Prince on February 2nd. Would it have been --

THE COURT: He didn't exactly say that. He said he talked to the dispatcher and the dispatcher recently told him that the dispatcher was of the view that Mr. Kiernan was to be the captain and then he described a rather complicated procedure by which they determine who is to be the captain, but he didn't say he has any knowledge of or that their records reveal that any of these procedures were employed so that either Mr. Kiernan or Mr. Reimer was either directly told or put in a position to be certain that he was considered the captain.

Do I correctly summarize your previous testimony?

THE WITNESS: Yes, sir, but if I can qualify that: our records show that the captain is the individual who makes out the daily tug sheet, the operations sheet. He is also the individual who signed the payroll sheet. Mr. Kiernan, Captain Kiernan, did both of those things.

THE COURT: He did those immediately before the voyage in question but, as I understand it, Mr. Reimer returned to the vessel just before the voyage in question?

THE WITNESS: I don't believe Mr. Reimer --

MR. LOSQUADRO: He did that during the whole time he is on the tug, your Honor.

THE COURT: Let's leave aside this voyage. When did Mr. Reimer return with respect to this voyage?

THE WITNESS: Just a couple of days prior.

THE COURT: Was this the first voyage the tug made after he came back aboard?

THE WITNESS: If I can get the tug logs --

MR. BESHLIAN: The record will reveal he joined the vessel on the afternoon of February 2nd.

THE COURT: It is clear, then, that Mr. Kiernan, as a replacement had been serving as the captain before Mr. Reimer returned?

MR. BESHLIAN: Captain Kiernan joined the vessel on February 1st.

THE COURT: The day before?

MR. BESHLIAN: Yes, sir.

THE COURT: Were there any logs completed or any administrative steps taken by one of them purporting to be captain between February 2nd and February --

MR. KIMBALL: The daily report shows, your Honor, that Captain Kiernan prepared the daily report for February 2nd and February 3rd.

THE COURT: When did he prepare it?

MR. KIMBALL: This is something that Captain Kiernan can testify to later, I think, your Honor.

MR. SCHULMEISTERS: Your Honor, Exhibit 6 also shows that on February 1st, the day when Captain Kiernan was on board, it was signed by a J.B. --

THE WITNESS: Kromer, K-r-o-m-e-r.

MR. KIMBALL: Your Honor, respectfully, I think we are taking things somewhat out of order. I think Captain Kiernan can clear up some of the confusion when he has an opportunity to testify and he can testify as to the circumstances which brought him to the Ocean Prince and I believe he would be the better witness to ask these questions of.

THE COURT: Quite possibly. Continue.

Q Again relating back to the Pittston satisfaction with the services of the Ocean Prince, that was all related to the southern voyages, am I correct?

A That's correct.

MR. BESHLIAN: No further questions, your Honor.

THE COURT: If you expect to be brief with your redirect, we will try to get rid of this witness before the luncheon break. If you expect to be more than ten minutes, we will wait.

MR. KIMBALL: I think it could go a bit more than ten minutes. It is hard to say, your Honor.

THE COURT: Well, he is your witness and if you don't mind bringing him back after lunch, I don't mind either.

We will adjourn for lunch at this time and resume in one hour.

(Luncheon Recess)

AFTERNOON SESSION

2:20 p.m.

THE COURT: We have a witness on the stand, I believe?

MR. LOSQUADRO: That's correct.

WALTER KRISTIANSEN, resumed.

REDIRECT EXAMINATION

BY MR. KIMBALL:

Q What position did you hold before you became vice president of operations at Red Star?

A Special Projects Manager.

Q Do you recall the time period during which you held that position?

A From June of 1971 until August of 1973.

Q What position did you hold prior to that time?

A Personnel Manager.

Q How long were you in that position?

A From the time I started with the company, February of 1968, until I moved to Special Project Manager.

Q Can you tell us what your understanding with respect to the duties of a deckhand on board a tug?

A To perform the maintenance and the housekeeping aboard the boat, to attend to lines, insure that towed vessels are properly made up, and to stand lookout watches and other duties as assigned by the captain.

Q Are there any situations which might arise when the deckhand would be asked to take the wheel of the tug? I am referring now to 1974.

MR. SCHULMEISTERS: Your Honor, he is leading the witness all the way on this.

THE COURT: Oh, I don't think that is too bad. I will allow it.

A Yes, sir.

Q Can you describe those situations for us?

A Situations where the master wants to pay particular attention to some other action taking place in the wheelhouse, such as taking fixes on radar.

Q What is the normal crew complement for a tug like the Ocean Prince?

A The Ocean Prince carries six persons aboard.

Q Can you tell us what those six people would be doing, what would be the jobs of each of the six?

A There would be a designated captain, a mate, two deckhands, a cook and the Ocean Prince is an automated vessel and there would be a non-watchstanding engineer.

THE COURT: What do you mean by non-watchstanding?

THE WITNESS· He doesn't have specific hours that he has to be in the engine room. He can set his own hours to accomplish maintenance.

Q Do the mate and captain stand alternate watches?

A Yes, sir.

Q Would it be possible for the officer on the deck, as the judge referred to him, the mate on duty or the captain on duty, if he believed it necessary to break out the other man, the other captain or mate, to give him assistance?

A Absolutely. It happens frequently.

Q Can you tell us if the dispatcher, Mr. Keenan, would have been familiar with Captain Kiernan's qualifications and experience when the Ocean Prince was assigned on the New London job?

A Yes, sir, he was.

MR. SCHULMEISTERS: Your Honor, objection. That is hearsay evidence.

THE COURT: How are you aware of that?

THE WITNESS: I had a discussion with Mr. Keenan.

THE COURT: Well, it is hearsay, then. Is it the normal practice -- I think you testified it was the normal practice for dispatchers to have knowledge of the capabilities of the various captains and mates but that this is derived primarily from their radio communications with them.

THE WITNESS: That is true. In Captain Kiernan's position, however, he actually primarily worked for the affiliate company and one would say, "How could he know about that?" Well, the dispatching setups at that time were in the same room and there was a great deal of overlapping.

THE COURT: Which affiliated company are you talking about?

THE WITNESS: Spentonbush.

Q Does Red Star have any policy concerning the use of lookouts?

A Yes.

Q Can youdescribe that policy?

A We expect that lookouts be posted and maintained in accordance with the rules of the road, period.

Q Can you tell us how that policy was communicated to the men on the boats?

A Through our --

MR. SCHULMEISTERS: Objection, your Honor. He just testified there were no instructions given to the tugs as --

THE COURT: Let's hear his answer and we will test it against that. Go ahead.

A Through informal discussions with the men, through our actions, and through the general attitude we take and attempt to project.

THE COURT: Nothing in writing, though?

THE WITNESS: No, sir.

Q Do you think it would be necessary to have a written communication to each of the tug captains and navigators to insure that they would know your policy concerning lookouts?

MR. SCHULMEISTERS: Objection.

THE COURT: Sustained.

MR. KIMBALL: Thank you.

Q Does Red Star from time to time take disciplinary action against any of its employees?

A Yes, sir.

Q Has Red Star at any time taken disciplinary action against employees who have acted as navigators on tugs and who have violated inland rules of the road?

A Yes, sir.

MR. KIMBALL: I have no further questions.

THE COURT: Any additional cross?

MR. SCHULMEISTERS: Just one question, your Honor.

RECROSS EXAMINATION

BY MR. SCHULMEISTERS:

Q I refer you to pages 57 and 58 of your deposition, bottom of page 57. Were you asked these questions and did you give these answers:

"Q So it wouldn't surprise you at all if the deckhand on Mr. Reimer's watch shortly before the accident had gone to get coffee?

"A Not at all.

"Q It is fairly standard practice?

"A Yes."

Were you asked those questions and did you give those answers?

A I did.

Q Were they the truth?

A Yes.

Q With respect to the six-man crew you just testified to, the only ones that would be navigating would be the two mates and the two deckhands -- withdrawn.

The only two navigators would be the mate and the captain, is that correct?

A That's correct.

Q And the cook and the engineer would have nothing at all to do with navigation?

A No, sir.

MR. SCHULMEISTERS: Thank you.

RECROSS EXAMINATION

BY MR. BESHLIAN:

Q On the same page, about halfway down the page, the question was asked:

"Q Do you have any instructions as to how to stand a watch?

"A None.

"Q Do you have any instructions as to what navigational procedures should be followed?

"A No."

Were those questions asked and were those the answers you gave at that time?

A Yes, sir.

Q Were they correct then?

A Yes, sir.

Q Are they correct now?

A They are.

MR. KIMBALL: Your Honor, may I be permitted to ask one further question?

THE COURT: Yes.

MR. KIMBALL: I ask this because I believe that Mr. Kristiansen's testimony is being taken out of context.

REDIRECT EXAMINATION

BY MR. KIMBALL:

Q I ask that you look at page 57 of the transcript and the section Mr. Schulmeisters just referred to. Do you see anywhere in his question about deckhands going down for coffee, any reference to a lookout going down for coffee?

A No, sir.

Q Would Red Star, to your knowledge, ever condone a policy which would allow a lookout to do anything other than act as a lookout?

MR. SCHULMEISTERS: Objection, leading.

THE COURT: Sustain the objection, but now the witness has me a bit confused. Normally there is only one deckhand on duty at a time.

A Yes, sir.

THE COURT: So I would take it that the question asked on deposition didn't concern the deckhand off duty because he could do anything he felt like?

THE WITNESS: That's correct.

THE COURT: So when you said it was not uncommon for a deckhand to go down for coffee, you were speaking of the deckhand on duty?

THE WITNESS: Yes, sir.

THE COURT: Does that mean that you do not view the deckhand's primary function while underway as being a lookout?

THE WITNESS: It depends upon the circumstances.

THE COURT: Take 2:00 a.m. in the morning on a snowy night when there are no aids to navigation in sight.

THE WITNESS: His primary duty should be a lookout and I would expect him to be a lookout.

THE COURT: Is it in conformance with your policy under weather conditions of that sort for the deckman who is serving as a lookout to go below for coffee at such a time?

THE WITNESS: Absolutely not.

THE COURT: But on a less troublesome occasion, say broad daylight, offshore, nothing nearby, when a lookout doesn't appear to be of such great necessity, then you would not think it unusual for him to go for coffee?

THE WITNESS: Not at all.

MR. KIMBALL: No further questions.

RECROSS EXAMINATION

BY MR. SCHULMEISTERS:

Q Would it be okay for the lookout to go down if he had two miles visibility?

MR. KIMBALL: I object, your Honor. He is asking Mr. Kristiansen to make a judgment that I think --

THE COURT: That is not enough in the way of facts for him to give an answer.

MR. SCHULMEISTERS: Your Honor asked about a snowy night and I would like to add to that --

Q If the visibility was two miles, would it be all right for the lookout to get coffee?

A Where are you, in the middle of the Atlantic Ocean or 200 feet offshore?

Q On the Hudson River.

MR. KIMBALL: I believe the witness gave a clear indication of Red Star's policy, your Honor.

THE COURT: I will allow this. If you are in the Hudson River with two miles visibility, should the lookout remain on duty or do other things?

THE WITNESS: I would say that he would be able to go down for coffee with a two mile visibility, considering the tug's speed.

MR. SCHULMEISTERS: That's all.

THE COURT: I think you are excused.

(Witness excused)

MR. KIMBALL: Your Honor, we would call as the next witness Commander Blomquist of the Coast Guard. We had intended to take Captain Kiernan now but we understand Commander Blomquist won't be available tomorrow.

THE COURT: All right.

HUBERT T. BLOMQUIST, called as a witness by the Plaintiff, being first duly sworn, testified as follows:

questioning, your Honor. It is beyond my examination and he is attempting to bring into the record matters which are the subject of other litigation, possibly.

THE COURT: We will wipe from the record any consideration of Ethel H, as if the witness had not mentioned it.

MR. KIMBALL: That is quite acceptable, which means that the witness doesn't know of any subsequent strandings to the one in suit.

MR. SCHULMEISTERS: This is precisely illustrative of the tug boat industry, how they operate: as soon as you talk about whether they have compasses or qualified men then they say, "No, I don't want it any more."

THE COURT: Let's move on.

Q The endorsements that were marked, do they make specific reference to no loss of life being involved?

A Yes, sir, they do.

Q Is that one of the major considerations the Coast Guard uses in evaluating casualties?

A It is an important consideration.

Q With respect to licensing, did you spend time in a job where you dealt with licensing of personnel?

A Yes, sir.

Q Do you recall when first licensing was required of tug boat personnel?

A In 1973 the law came into force and we began then to issue the licenses.

Q This refers to licenses for uninspected vessels?

A Yes, sir.

Q Was there a so-called grandfather clause?

A Yes, sir.

Q What did it provide?

A It provided that for a year after the law came into force that the individuals who could produce documentary evidence of having served as operators of towing vessels could be issued the exam by simply taking an open-book --

Q Issued the exam?

A -- issued the license by taking an open-book rules of the road test.

Q How would they prove that they had this prior experience?

A Their employers would provide documentary evidence that they had worked for them for a period of time.

Q So this would be letters from the tug boat companies?

A Yes, sir.

Q So the tug boat companies would know that with these letters the men would be liecnesed as long as they could pass an open-book rules of the road examination?

A Yes, sir.

THE COURT: Before you leave that topic, let's show the witness Exhibit 1, which is Mr. Reimer's license. Can you tell from looking at this license whether it was issued on a grandfather clause basis or whether he went through complete testing before he got it?

THE WITNESS: Well, your Honor, it was given during the period when the grandfather clause was in force and I couldn't tell simply by looking at this license how he was examined, no, sir.

THE COURT: All right.

Q Let me show you Exhibit 23, which is the report by Lieutenant Junior Grade Whitley on the Ocean Prince. Can you tell me, please, what type of an investigation was carried out, looking at that report?

A Well, this is an informal investigation.

Q Can you please explain to us what is an informal investigation?

A An informal investigation is the kind that the rules for conducting it, as far as Coast Guard police goes, we can receive information either in sworn or unsworn statements or correspondence or by telephone call interviews or by going to the scene and talking to individuals. It is not a proceeding in the sense of having parties in interest or anything of that nature.

Q You also have in front of you the Ocean Prince file, right, the whole folder there?

A Yes, sir.

Q Does that contain any statements?

MR. KIMBALL: Statements by whom?

MR. SCHULMEISTERS: Anybody.

MR. KIMBALL: I think it is self-evident that it contains statements, your Honor.

A No, sir.

Q Would it be safe to assume --

MR. KIMBALL: What was the answer?

THE COURT: No. It wasn't so self-evident.

MR. KIMBALL: No statements in that record?

THE WITNESS: I take a statement to be information given by one of the principals in the casualty.

MR. KIMBALL: Does the file indicate if Mate Reimer appeared at the Coast Guard office for an interview by the person in charge?

MR. SCHULMEISTERS: May I continue my cross examination, your Honor, please?

THE COURT: Yes.

MR. SCHULMEISTERS: Thank you.

MR. KIMBALL: I will ask about it on redirect.

Q The answer is there is no statement?

A Yes, sir.

Q Do you have any notes of any interviews?

A No, sir.

Q Do you have any records indicating whether or not the investigating officer visited the scene of the casualty?

A No, sir.

Q In view of what you have said, would it be safe to assume that the investigation may have consisted of either a telephone call or an informal conversation?

MR. KIMBALL: I object, your Honor.

THE COURT: Well, what does it appear was the basis of the investigation, how was it conducted, from what you can tell there?

THE WITNESS: It was definitely an informal investigation.

THE COURT: What does that mean?

THE WITNESS: I don't know how the investigation was actually conducted.

THE COURT: You cannot tell from that whether an interview of Reimer was conducted, can you?

THE WITNESS: No, sir.

MR. KIMBALL: Is there a letter in there addressed

THE COURT: Let's not open that up again.

(Documents handed to witness)

A What was the question, the last question?

THE COURT: Whether somebody went up to the scene of buoy 25 to make an on-the-scene investigation of the stranding.

A The message traffic indicates there were Coast Guard units at the scene as a result of the pollution -- floating units.

THE COURT: Were their reports made part of the investigation?

THE WITNESS: There is message traffic in the file and I am sure that they were considered in preparing a report.

Q That is the message traffic?

A Yes, sir.

MR. SCHULMEISTERS: Actually, your Honor, as far as the pollution goes, it is a file completely disassociated from this office and is about a foot thick.

Q Have you ever had any navigation experience?

A Yes, sir.

Q Can you relate that to me, please?

A I was a junior officer attached to an ice breaker for two years and at that time I did serve as deck watch officer.

Q So you have stood deck watches?

A Yes, sir.

Q Did any of this operation include the Great Lakes?

A Yes, sir.

Q Did you do any piloting there?

A Yes, sir.

MR. KIMBALL: Your Honor, he is going beyond the direct examination.

THE COURT: At this point he is adopting him as his own witness.

MR. SCHULMEISTERS: Well, for this point, obviously.

Q In standing deck watches, is it -- what was the method of ascertaining the ship's position that you used?

A Radar fixes --

MR. KIMBALL: Under what circumstances?

THE COURT: I think you better narrow the question a bit. Is your question as to whether navigating on rivers or on the narrow waterways how he determined his positions?

MR. SCHULMEISTERS: Yes.

MR. KIMBALL: He only qualified the man for the Great Lakes, your Honor.

THE COURT: You don't get to the Great Lakes without going down a river.

MR. KIMBALL: Unless you start in Chicago.

THE COURT: But he was on an ice breaker and I gather he was on ocean duty for awhile.

THE WITNESS: Yes, sir.

THE COURT: Did you ever come down the St. Lawrence Waterway?

THE WITNESS: No.

THE COURT: You were on ocean duty, also?

THE WITNESS: I was, North Atlantic weather patrol, two and a half years.

THE COURT: So you have had Great Lakes navigation experience and open ocean navigation experience but haven't particularly been in rivers?

THE WITNESS: On the Great Lakes I was in rivers, St. Mary's, St. Clare.

THE COURT: When visibility is limited, at night when it is snowing and you are in a river, how did you get a fix?

THE WITNESS: We would go for a radar fix at that point.

BY MR. SCHULMEISTERS:

Q If you had a visiblity, say, of one mile, or a mile and a half, would you then be able to get visual fixes?

A It would depend on where you were and what was available in terms --

Q If you had lights visible, would you use those for visual fixes?

A Yes, sir.

Q How would you use buoys?

A Well, I would consider the buoys the floating aids to navigation and I would consider several in a group certainly as a reference, with the other factors taken into consideration.

Q Would you ever rely solely on buoys?

A No, sir.

Q Why not?

A I think it is a very bad practice because a buoy can't be depended on to be in the position it is charted for due to heavy weather or being struck or ice conditions. They do drift off station.

Q What is the first time you heard not to rely solely on buoys?

A When I was learning basic piloting.

Q When was that?

A As a boy when I was in the sea scouts, before the Coast Guard.

MR. SCHULMEISTERS: No further questions.

MR. BESHLIAN: No questions, your Honor.

THE COURT: I have one line of questioning for this witness.

You notice when you come up the Hudson River and you round Anthony's Nose and go under the Bear Mountain Bridge, a quick look at the chart would give you the impression that if you want to maintain a midline up the middle of the channel that you have almost a straight run up to Con Hook Light. Wouldn't you say that is the first impression, from looking at the chart?

THE WITNESS: Yes, sir.

THE COURT: Look at it a little more carefully in terms of what Mystery Point does coming in from the east and what this rock does where buoy 25 is coming from the west. Would you agree the amount of channel left to the west of buoy 25 is inadequate for safe navigation?

THE WITNESS: Yes, sir.

THE COURT: That means your channel is what remains to the east of the rock?

THE WITNESS: Yes, sir.

THE COURT: Consequently, the midpoint of the channel at Mystery Point is right about where that letter D is, and I am referring to Exhibit 4 -- where the D is on "HRD" whereas the midpoint of the channel off the buoy is somewhere to the right of 87, correct?

MR. BESHLIAN: Which buoy is that, your Honor?

THE COURT: There is a depth reading of 87 next to buoy 25 and I suggest the midpoint of the channel at that point is to the east of that 87?

THE WITNESS: Yes, your Honor.

THE COURT: If you are going to maintain the midpoint of this channel, you cannot run a straight heading, you have to start bearing more easterly as you pass Mystery Point to come over this way (indicating)?

THE WITNESS: That's correct. She should be opening up on you relative wise as you near the danger area.

THE COURT: To do that you would either have to know you were past Mystery Point or you would have to pick up the buoy or you would have to get a radar reading off something in the area, right?

THE WITNESS: Con Hook Light (indicating).

THE COURT: That would only give you a line of position which would fall along here and you could be in the middle and if you are further forward than you think you are, you are up onto the rock, and if you are further south, you are well off of it?

THE WITNESS: The change would be slight, there is no doubt about it. It is something you would have to watch, but I would think you could more or less in judging your relative position adjust, like even if you were going by a seaman's eye to make your mistakes in this direction (indicating).

THE COURT: So long as you are past Mystery Point?

THE WITNESS: Yes, sir.

THE COURT: If you have a lot of ice piling up to the north of Mystery Point so you think you are not by it, it wouldn't be very difficult, unless you saw buoy 25, to run yourself up on that rock, would it?

THE WITNESS: If you were just trying to discern where the shoreline was, if that is all you were looking at.

THE COURT: I am talking about a night, snowing, limited visibility, and even if you pick up Con Hook Light, unless you know how far up the river you are, it doesn't give you a line of bearing east-west.

THE WITNESS: You can construct a danger bearing, I would think.

THE COURT: Let's assume, just for sake of argument, you adopted a danger bearing of 20 degrees, 20 degrees is a good danger bearing until you get up fairly close to this, at which your danger bearing should drop to around zero, right?

THE WITNESS: Yes, sir.

THE COURT: So it really depends on how far past Mystery Point you are. What I am really getting at is, that aid to navigation in that location is a rather crucial thing for the seaman going up the river at night in bad weather conditions.

THE WITNESS: When you are beginning this dog leg up the river, that certainly stands out as something to worry about.

THE COURT: We know from this incident and from the earlier incident, and without regard to subsequent incidents, that that can buoy has a habit when the ice starts piling up of getting covered over by the ice.

THE WITNESS: I don't know that.

THE COURT: Well, we have two reported incidents of it and I think they are going to try and prove subsequent incidents.

What other forms of aid to navigation could be put at that location which would avoid the possibility of going under the ice?

THE WITNESS: That is not within my purview, your Honor.

THE COURT: You don't want to express an opinion on that?

THE WITNESS: Oh, express an opinion?

MR. SCHULMEISTERS: Your Honor, I think there are some Coast Guard officers who have aids to navigation experience who will be in this court. I don't think this man has that.

THE COURT: I think he has experience. It may not be his major area of expertise, but he has some experience.

THE WITNESS: In my judgment, when I first looked at this charted area, to me, as you said before, anything west of that rock, other than a very small pleasure vessel, you wouldn't want to consider it. To me it is like a submerge peninsula, almost, and, I don't know, just in my own opinion, I think it is really the only thing you have to worry about on that dog leg. It is very prominent and, for the best of me, I can't understand why people run into it.

THE COURT: It doesn't stick up above the water and unless you know how far you are from Con Hook and unless you see the buoy, you run the risk of going over it. My question to you was, what other aid to navigation could be put there that wouldn't get itself covered over by the ice, if any?

THE WITNESS: Gee, I really don't think I can answer that, your Honor. I am not sure.

THE COURT: Anything further for this witness?

not been qualified as an expert boat handler, but he is also employed by the hostile party --

THE COURT: He has not been too hostile to you so far.

I will sustain the objection.

MR. SCHULMEISTERS: I have one question, your Honor.

CROSS EXAMINATION

BY MR. SCHULMEISTERS:

Q If you are in the area of Mystery Point, could you get the radar distance from Bear Mountain Bridge?

MR. KIMBALL: Your Honor, that depends on the circumstances.

Q If you had radar on board, which the Ocean Prince did.

THE COURT: I don't think there is any claim that the weather conditions were so severe that the radar was not giving a return. I think obviously the radar would have to be set for a sail sufficient to get a reading off Bear Mountain Bridge which was how far off the stern --

MR. SCHULMEISTERS: One and a half to one and three-quarters miles.

THE COURT: I think that is a fair question. If you had light snow, would you expect to be able to get a radar reading off the bridge?

THE WITNESS: Yes, sir.

And put together with a bearing on Con Hook Light, you could get a very good position?

MR. LOSQUADRO: Objection.

THE COURT: Visual bearing?

MR. SCHULMEISTERS: Yes.

THE COURT: There has been no evidence so that the mate saw Con Hook visually.

MR. SCHULMEISTERS: There is evidence in the depositions that the visibility was two miles and certainly that point is less than two miles from Con Hook Light and I think it is a fair assumption for this question.

MR. LOSQUADRO: The question was leading, first of all. Second of all, I don't think the question has been properly put for this witness to answer.

THE COURT: I will sustain the objection.

Q Assuming you had a two-mile visibility and radar set at proper scale to get a reading on Bear Mountain Bridge and if you had a compass, would a bearing circle, or an azimuth at least an item on which you could take a bearing, with those two taken together, could you get a fix?

MR. LOSQUADRO: Objection. I don't think this witness can be used as an expert. He is employed by the third-party defendant in this case.

THE COURT: Obviously if you did all these things and had all these things, you could get a fix. With the bridge for a range and the light for a bearing, you could get a fix, but there is no evidence that he had either of these things. I will sustain the objection.

Anything else?

Q Could you also get a radar range on Con Hook Island?

MR. LOSQUADRO: Objection, your Honor.

THE COURT: Can you tell from looking at the chart here whether Con Hook Light --

MR. SCHULMEISTERS: The island, your Honor.

THE COURT: -- if Con Hook Island is sufficiently high to give you a radar return, taking into account there was substantial ice in the river at the time?

THE WITNESS: No, sir, I can't determine it.

MR. SCHULMEISTERS: Your Honor, subject to connection, there is deposition testimony that Con Hook Island was visible on radar. Subject to that connection, may I be allowed that question?

MR. LOSQUADRO: I don't remember that, your Honor, and the witness already indicated he doesn't think he can answer that question.

THE COURT: I will sustain the objection.

MR. SCHULMEISTERS: If there has been evidence the took him as his own witness on a new topic and you are in effect cross examining.

REDIRECT EXAMINATION

BY MR. LOSQUADRO:

Q Have you ever worked commercial vessels?

A No, sir.

Q Have you ever navigated on the Hudson River?

A No, sir.

Q I hand you Exhibit 4, which is the chart you have been looking at, and ask you to tell me if Con Hook Island Light is land based or water based or on the beach?

A Is it land based or water based or on the beach?

Q Does it appear to be on the beach?

A It appears to be on the beach.

Q Would the radar pick it up or would it be lost in Con Hook Island on the radar?

A I am not sure.

Q I hand you a pair of dividers and ask you if you can measure the width, from east to west, of the rocky obstruction marked by the 25 can buoy?

THE COURT: East to west from which direction?

MR. LOSQUADRO: Relative to the shoreline.

Q What is the width of it as it is presented to a northbound vessel?

THE COURT: From buoy 25 for the east shore of the Hudson?

MR. LOSQUADRO: First I would like him to measure the rock and then I will go to the shore.

THE COURT: All right.

A It is somewhat obliterated --

Q By the red pen, but if you think you need another chart --

A I would estimate it at 250 yards, approximately.

Q That is the width of the rock?

A As far as I can determine here.

Q The eastern extreme of the rock, how far does that project out from the shoreline, project out into the channel?

A Approximately 500 yards.

Q If ice accumulated and rafted along shorelines, would that ice be reflected on the radar scene as shoreline, would it appear to be shoreline?

A If a sufficient amount of it accumulated, it would be picked up by the radar.

Q If ice which had rafted and accumulated collected north of Mystery Point, which is the testimony in the bene esse deposition, might that not show on the radar that the shoreline to the east was much further out than it really was?

A It could appear that way, if there was a sufficient amount of it.

MR. LOSQUADRO: No further questions, your Honor.

RECROSS EXAMINATION

BY MR. SCHULMEISTERS:

Q If ice had accumulated north of Mystery Point, was the question --

MR. LOSQUADRO: Accumulated and rafted, were the words.

Q In the area of the middle of Mystery Point, could you get your distance off the radar, the distance off the eastern shore?

A Where would the vessel be located?

Q Approximately in the area of Mystery Point.

A Yes, sir, you could.

Q With a radar range off Bear Mountain Bridge, you would be able to get yourself a rough position to show whether or not you are to the east or the west of the center line of the river?

MR. LOSQUADRO: Objection, leading.

THE COURT: Well, ignore his leading. Could you get such a position?

THE WITNESS: Yes, sir.

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JOHN KIERNAN, called as a witness by the plaintiff, having been first duly sworn, testified as follows:

MR. LOSQUADRO: Your Honor, prior to today we requested our office to obtain all the charts for the full length of the Hudson River.

We obtained four and we are told by Mr. Schulmeisters there are five. One of the four we have is the chart for this area and is the more current edition of what you see before you there. We would like to offer it in evidence.

We don't think it is an official government document and we would like to ask if there are any objections.

MR. SCHULMEISTERS: The chart of the area. no objection. The other ones, I don't see relevance.

THE COURT: Why are you offering the other charts?

MR. LOSQUADRO: It shows the entire aids to navigation on the river and the various types of aids used by the Coast Guard, one of which has been used several dozen times, is appropriate to the area we are considering. It is relevant to what the Coast Guard determined is usable in ice conditions and what they have used.

THE COURT: For whatever relevance it may have, it will be admitted.

MR. LOSQUADRO: Your Honor, there are four of them and we are trying to obtain the fifth.

MS. SCHULMEISTERS: They have been premarked 12 through 15.

(Plaintiff's Exhibits 12, 13, 14 and 15 were received in evidence.)

MR. LOSQUADRO: Why don't I read off the chart numbers, your Honor, and indicate what exhibit it is. Exhibit 12, the tag is attached to Chart 12335, formerly Chart No. 745 for the Hudson and East Rivers.

Exhibit 13 is Chart No. 12341, covers the area from Weehawken to the George Washington Bridge.

Exhibit 14 is Chart 12347, formerly Chart 283, covering the area from Wappingers Creek to Hudson.

Exhibit 15 is Chart No.12348, formerly Chart 284, covering the area Coxsackie, to Troy.

The dates on all of these charts are 1975.

MR. SCHULMEISTERS: One reservation, your Honor, if any aids have been changed from 1974 to 1975 --

THE COURT: I don't think he is offering them for that reason. I think from the standpoint of showing alternatives in terms of aids to navigation -- assuming that type of aid was available in 1974, it doesn't matter whether it was installed then or later.

DIRECT EXAMINATION

BY MR. LOSQUADRO:

Q Will you state your name and address for the record.

A John Kiernan, 105 Birchwood Road, Medford, New York.

Q You will have to speak up, please, Captain.

What is your present occupation?

A I am a captain on a tugboat.

Q How long have you worked on tugs, in any capacity?

A Since I was 14 years old.

Q When was that, roughly?

A 1934.

Q Of that period, have long have you been steering tugs in the capacity of captain, relief captain or mate?

A I have been steering a tug since 1947.

Q Do you presently hold any licenses issued by the United States Coast Guard?

A Yes. I hold operator for uninspected vessels.

Q When did you get that license, if you remember, sir?

A I believe it was in '73.

Q Was that about the time the licensing requirement came out?

A Yes, sir.

Q Before you began steering tugs, how did you get your experience handling tugs with tows?

A I decked on tugboats, all various tugs, I worked on barges, and I decked up until 1946.

Q During that period did you receive any training in navigation or in tug handling by people you worked for on the tug?

A No.

Q How did you gain experience handling tugs and tows?

A Oh, I misunderstood the question. Yes, I did, the people I worked for, they taught me.

Q By whom are you presently employed?

A Spentonbush Fuel Transfer Service.

Q As a captain or mate?

A Captain.

Q Do you know if Spentonbush is connected with Red Star Towing & Transportation?

A I believe they are, yes, sir.

Q What is the nature of Spentonbush's business?

A They transfer fuel oil, chemicals, and various liquid products.

Q Is that on tugs and barges and/or tankers owned or operated by them, as far as you know?

A Yes, that is correct.

Q What is the name of the tug you presently work on?

A Salutation.

Q Are you the captain or mate of that tug?

A I am the captain.

Q What is the nature of Red Star's Towing business, if you know?

A Red Star's Towing business is general harbor towing.

Q Do they operate and maintain a fleet of their own tugs separate and aside from the Spentonbush tugs?

A Yes.

Q From whom do you get work assignments during the course of a day or week?

A We receive our orders from Spentonbush dispatchers.

Q From time to time have you or do you or do other Spentonbush captains get orders to work on a Red Star tug?

A Yes, sir.

Q Under what circumstances would that happen?

A Usually when they have a shortage of manpower.

Q Could you describe your present tugboat, dimensions and power?

A She's about 85 foot long, about 25 foot wide. She had a Diesel engine, 1240 horsepower.

Q On February 3, 1974, were you serving on board the tug Ocean Prince?

A Yes, sir, I was.

Q Prior to that date, when did you first join it?

A I joined the Ocean Prince February 1st, in Port Jefferson.

Q When you joined the tug at Port Jefferson on February 1st, who was the other pilot houseman at that time?

A Captain Jesse Cromer.

Q Between that time and the time you began what we call today the New London job, what did you, on the Ocean Prince, do? What type of work did you work at and in what waters?

A Well, from the time I signed on that morning we just ran a light oil barge from Port Jefferson down to Hess Reserve in Perth Amboy and we did harbor work after that.

Q You navigated in the Upper Bay and the Kills?

A Yes, sir, that is correct.

Q On your present tug, what is your working routine, by that I mean how many days do you work on the boat then how many off?

A Two weeks on and two weeks off.

Q During your two-week working period are you on the boat 24 hours a day?

A Yes, sir.

Q Does the tug have two licensed navigators, one in addition to yourself?

A Yes.

MR. SCHULMEISTERS: I have to object. He said two licensed and what kind of licenses?

MR. LOSQUADRO: Coast Guard licenses.

THE COURT: What difference does that make? We are talking about this vessel today and it has not been involved in a stranding.

Q During a 24-hour day do you stand watches?

A Yes, sir.

Q Will you describe the watches?

A I stand a watch from 1800 to 2400, the mate stands watch from 2400 to 0600, and I stand the watch from 0600 to 12 noon and the mate goes from 12 noon to 1800.

Q This is on the Salutation?

A That is correct.

Q Is this the way most tugs are set up in the harbor, so far as you know?

A Yes.

Q Is that the way the Ocean Prince worked, the way the watches were set up when you were on her in early February?

A Yes, sir.

Q Did there come a time when you received orders regarding the towage of the barge New London?

A Yes, sir.

Q Do you know where the tug was at the time?

A It was at Bushey Shipyard in Brooklyn.

Q In Gowanus Canal?

A Yes, sir.

Q When you left Bushey's Yard, who was your mate or who was the other pilot houseman?

THE COURT: You have not covered that. You have him coming aboard with a Mr. Cromer as the other steerer and you have not changed that.

MR. LOSQUADRO: It is at Bushey's Yard

where this happens.

Q Did Mr. Cromer leave the Ocean Prince before you began the trip with the New London?

A Yes.

Q Do you recall when that was?

A Some time in the afternoon.

Q Was that at Bushey's Yard?

A Yes, sir.

Q Was he replaced by anybody?

A Yes, sir.

Q Who was that person?

A Walter Reimer.

Q Had you met Reimer before?

A No, sir.

Q Did you know who he was, though?

A Yes.

Q Did you know him to be a regular member of the crew of the Ocean Prince?

A Yes, sir.

Q Did you shift watches with him or did you continue your 1800 to midnight watch?

A We continued the same watches.

Q Is that known as the captain's watch?

A Yes.

MR. SCHULMEISTERS: Your Honor, it is introductory but it is very leading and all of a sudden we get to the point where we get a question where it is important.

THE COURT: Yes, we did. When Cromer was aboard, what watch did you stand?

THE WITNESS: I stood 0600 to noon and 1800 to 2400.

THE COURT: And that was not the captain's watch, I take it?

THE WITNESS: Yes, sir, it was.

THE COURT: But when Cromer was aboard you stood the captain's watch, starting at midnight -- which is it?

THE WITNESS: From 0600 to 1200.

THE COURT: You stood that when Cromer was aboard so that you in effect were acting as captain?

THE WITNESS: No, sir.

MR. LOSQUADRO: They alternate watches from time to time and it is simply not that important a detail.

THE COURT: Then why did we go into it?

MR. LOSQUADRO: Well, introductory.

Q Did you understand you were temporarily assigned to the Ocean Prince?

THE COURT: Why ask it that way? Ask him whether this assignment was permanent or temporary.

Q Was it permanent or temporary?

A Temporary.

Q I hand you a book previously marked Red Star Exhibit 9 for identification and I ask you if you can identify and describe what it is.

A It is a logbook from the Tug Ocean Prince.

Q Could you turn to the page for February 1, 1974?

A Yes, sir.

Q Does that page contain any of your handwriting?

A Yes,sir.

Q Could you explain what the lines drawn up and down through the entries indicate?

A Well, that is when they transfer the information out of the logbook onto the daily reports. It is just a reminder it has been taken care of.

MR.LOSQUADRO: Are those the documents which have been handed into evidence already, your Honor?

Q After the transfer is made you put a line through it to mark it off?

A Right.

Q These are already in evidence as Red Star

Exhibit 6 and they are the daily tug report for February 1, 2, 3 and 4 for the Tug Ocean Prince. Could you look at the signature on the bottom of the page for February 1st and tell me whose signature that is?

A J.B. Brown.

Q Did you know who he was?

A No, sir.

Q Would you turn to the page for February 2nd. Whose signature is that?

A John Kiernan. That's me.

Q Would you turn to the page for February 3rd and tell me whose signature that is?

A That is also John Kiernan.

Q Could you turn to the page for February 4th and tell me whose signature that is?

A Louis Sampson.

Q Did he subsequently come on the boat?

A Yes, sir.

Q What is the purpose of the daily log reports?

A To transfer your work activity from the logbook onto the forms so you can send them to the office.

Q Who normally does that on the boat?

A Usually the captain.

Q But you did understand that your time on this boat was temporary?

A Yes, sir.

MR. SCHULMEISTERS: Objection, your Honor.

THE COURT: We have had it already.

MR. LOSQUADRO: WE have already had it. That is just a filler.

MR. SCHULMEISTERS: I don't want to interrupt on every question, but this whole line is leading and I do request that in the future he refrain from leading questions.

THE COURT: Yes. Please try. Let me ask the witness.

How often before had you come over to work for Red Star as a temporary?

THE WITNESS: That was the only time.

THE COURT: Did you understand that when you came over you were going to be a captain or a mate or did you not understand anything either way?

THE WITNESS: I understood it, your Honor, that I was going over there as mate.

THE COURT: Continue.

Q You stated that you did the daily log reports. Do you know who did the payroll, or is that the payroll?

A No, sir, this is not the payroll.

Q Is the payroll placed on the daily log reports or is that on another document?

A I am not sure.

Q Do you know who prepared and sent into the office the payroll for the Ocean Prince?

A Usually the captain.

Q Who did on this occasion, do you know?

A No, sir.

Q Do you know if other Spentonbush captains or mates were temporarily loan or otherwise worked on Red Star tugs from time to time?

A Yes, sir.

MR. BESHLIAN: I don't think that's relevant to this issue, your Honor.

THE COURT: It has some slight relevance.

Q I don't recall if I asked you if you know who Mr. Reimer was when he came on board.

THE COURT: You did, and he said no. He knew who he was, but he had never met him, is the more accurate statement.

Q What were your orders regarding the New London?

A When we left Bushey Yard we had orders to go to Exxon Constable Hook and pick up the loaded Barge New London. We left the yard a little after 6 and arrived over in Constable Hook right around 1900 and left there in about 15 minutes.

Q Were you on watch at that time?

A Yes, sir.

Q Could you please describe the Ocean Prince, her physical dimensions, length and width?

A About 90 foot long, about 26, 27 feet wide.

Q What is her horsepower?

A 1800 horsepower.

Q What type of engine does she have?

A Fairbanks & MOrse, opposed piston.

Q Was the tug equipped with radar?

A Yes, sir.

Q Was it equipped with a gyro compass?

A Yes, sir.

Q Was it equipped with a spotlight?

A Yes, sir.

Q How many men were in the crew at that time?

A 6.

Q Could you describe their positions and their names, if you remember them?

A There was a captain, a mate, an engineer, two deckhands and a cook.

Q Was this a fully automated tugboat?

A Yes.

Q Would you explain what a fully automated tugboat is?

A You can stop, start the engine from the pilothouse, switch over to generator and so forth.

Q Do you have anindicator panel in the pilothouse?

A Yes, sir.

Q What does that do?

A It tells you when you push a button to start your engine and when you get your engine when she is running, you can switch your generator from your auxiliary electric power to the shaft generator. It has alarms on it for overheat oil pressure.

Q And a steer failure indicator?

A Yes, sir.

Q The New London, as best you remember her, would you please describe her?

A She was an average barge, approximately 300 feet.

Q What was the width?

A 43, 43-6.

Q What was her depth or draft?

A I believe the draft was about 12 feet.

Q 12 feet that night?

A Yes, sir.

Q What was the barge's freeboard that night when you picked her up?

A About two feet.

Q Is this barge equipped with crew's quarters or cagin on deck?

A Yes, sir.

Q What is the height of that roof of that cabin above the deck of the barge?

A About four feet.

Q Is it a partially sunken cabin?

A Yes, sir.

Q Was she a low-profile barge?

A Yes, sir.

Q Is she a canaler?

A Yes.

Q Is it equipped with a towing notch or a towing well?

A Yes.

Q Would you describe what that is and where it is located?

A It is a V-shaped notch in the stern where you can put the bow of the tug in order to push?

Q When we say Exxon Con Hook, we understand Constable Hook range in Bayonne, New Jersey, not Con Hook Island by Bear Mountain Park?

THE COURT: That comes down to the fact there are two Con Hooks?

MR. LOSQUADRO: One Con Hook Island and one Con Hook Range, but they are miles apart.

THE COURT: Both of them, the word "Con" is short for "Constable"?

MR. SCHULMEISTERS: The one in Bayonne is Constable Hook and the one we are talking about is Con Hook.

THE COURT: I saw a document here earlier which referred to it as Constable Hook, unless I was making the mistake of reading something else with respect to Exxon and confused it.

Q The Exxon pier is in Bayonne, New Jersey?

A Yes, sir.

Q When you arrived there was Reimer off watch?

A Yes, sir.

Q Did you at that time make up to the Barge New London

A Yes.

Q Would you tell us how you did that?

A We run cables from the starboard and port quarter to the stern of the barge.

Q When you say cables, what type of cables?

A Inch and a quarter cables.

Q Any other lines?

A And we also put 5-1/2 inch lines from the side of the tug to the stern of the barge, on each side, and doubled them up three or four times.

Q Do you know where Reimer was at the time? Was he up and about or down below?

Q At that time he was helping the deckhands.

Q Helping them in making up the tow?

A Yes, that is correct.

Q Do you know what time the tug and barge got underway, and you can refer to a document if you don't remember?

A 1915.

Q On February 2nd?

A Yes, sir.

Q Do you know what Reimer did when the trip began?

A I believe he went below.

Q Where was your destination?

A Kingston, New York.

Q Would you please describe or tell us what the height of the man in the pilothouse is above the waterline of the tug?

A Approximately 20 feet.

Q Was there anything on the barge which was in tow ahead of you obstructing your view ahead from the pilothouse?

A No, sir.

Q Did I ask you where you were heading?

THE COURT: Kingston, New York.

Q Do you remember if you had the radar on during your watch?

A No, sir, I don't.

Q Do you remember if you had the radar on when Reimer relieved you of the watch?

A Yes, sir.

THE COURT: Yes you did or yes, you remember?

THE WITNESS: Yes, I had it on.

Q Do you remember the range the radar was set on?

A No, sir, I don't.

Q Had you used the radar up to the time when Mate Reimer relieved you of the watch? Had you used the radar to assist you in navigating your watch?

A No, sir.

Q Did you have any reason to believe it was not working properly?

A No, sir.

MR. SCHULMEISTERS: Object[illegible]. YourHonor, this isleading again.

THE COURT: Yes. Moreover, since he didn't use it, he would have no way of knowing.

MR. LOSQUADRO: Well, he might have heard from complaints by somebody else.

THE COURT: He is the first watch on this voyage.

Q Did you experience any steering problems on the tug during your watch?

A No, sir.

Q Did you experience any engine or throttle problems or difficulties during your watch?

A No, sir.

Q Did any of the warning systems, buzzers or lights on the automation panel sound off or go off during your watch?

A No, sir.

Q At what time did Reimer relieve you of your watch?

MR. SCHULMEISTERS: Objection. There has been no testimony he was relieved. Suppose we get back to the rules of evidence and ask the witness what happened?

MR. LOSQUADRO: It is a minor point, but I will rephrase the question.

THE COURT: Go ahead.

Q Were you relieved of the watch that day?

A Yes, sir.

Q What time?

A Around 2350.

THE COURT: Where was the vessel at that time?

A It was right about in line with Bowling Point and Haverstraw Bay.

Q Did Mate Reimer come up to the pilothouse at that time?

A Yes, sir.

Q Who was there with you, if you remember today, and if you don't remember today, say so.

MR. SCHULMEISTERS: Objection, your Honor. We are getting close to it and I think we --

THE COURT: We are going to stop for the evening at this point, but when we start tomorrow we will have no leading of the witness.

Q Was anybody with you in the pilothouse besides you and Reimer when Reimer relieved you of the watch on Haverstraw Bay, if you remember?

A I don't remember.

MR. LOSQUADRO: Your Honor, there is a natural break here and if I could have a question or two --

THE COURT: All right.

Q How long did you remain in the pilothouse with Reimer after he came up?

MR. SCHULMEISTERS: Objection. Leading.

Q Did you remain with Reimer in the pilothouse for anylength of time after he came up?

A 15, 20 minutes.

Q Then what did you do?

A Then I went below.

MR. LOSQUADRO: Your Honor, I think this is a natural spot for a break -- let me ask him the weather conditions and that will be it.

THE COURT: Go ahead.

Q Was it nighttime?

MR. SCHULMEISTERS: Objection. Why don't you ask what time it was?

THE COURT: 2350 is nighttime. We all know that.

Q Was it overcast or clear?

A It was overcast.

Q Was there snow --

MR. SCHULMEISTERS: Objection.

THE COURT: What were the weather conditions?

Q What were the weather conditions?

A There was slight snow flurries.

Q What was the stage of the tide at that time?

A I believe it was ebbing.

MR. LOSQUADRO: I think that is a natural break, your Honor.

THE COURT: All right.

The clerk has been looking into the quetion of proof of subsequent accidents has come up with two cases indicating that it may be admitted there is a question of whether a dangerous condition exists, and he cits Balchunas v. Palmer, 151 F. 2d, 842, which applied Connecticut law, although it is a Second Circuit case, and Hayes v. Lane Construction Corp., 260 F. 2d, 279, applying New York law.

I take it, however, that in an admiralty situation federal rather than New York law should be applied on an evidentiary question.

MR. SCHULMEISTERS: Particularly federal law, your Honor.

MR. LOSQUADRO: I think the federal rules of evidence are applicable, your Honor.

THE COURT: Judge Weinstein has a comment in alleges that Coast Guard cutters have run aground on that rock on two occasions. I think the Sassatrass was mentioned, and unless they were working buoys at the time, which always presents the hazard of grounding while you are working clost to the hazard, I would say that's rather potent evidence of the danger of the situation, assuming you can prove it.

MR. LOSQUADRO: You will hear evidence on those as well, sir.

Aside from that, when we get into the subsequent incidents, we have, from our own sources, learned of another incident, and Commander Blomquist did not know about it, but I don't know what his recall will do.

- - -

J O H N K I E R N A N, recalled.

DIRECT EXAMINATION (CONTINUED)

BY MR. LOSQUADRO:

Q Captain Kiernan, before we broke yesterday, you were looking at what is marked as Red Star Exhibit 9 for identification. I had you look at several pages in February.

Could you describe what this book is?

A Yes, it is the logbook from the tug Ocean Prince.

Q Are entries in that log, sir?

A Yes, sir.

Q Who makes those entries?

A Captain and the mate.

Q Is that book maintained in the regular course of the tug's business?

A Yes, sir.

MR. LOSQUADRO: I'd like to offer this in evidence, your Honor.

THE COURT: Any objection?

MR. SCHULMEISTERS: No objection.

MR. BESHLIAN: No objection.

xx (Plain tiffs' Exhibit 9 was received in evidence.)

THE COURT: This contains the same entries as the tug --

MR. LOSQUADRO: Yes, they are copies from that book and then mailed into the office with one additional fact of the payroll.

Q We ended yesterday, Captain, in Haverstraw Bay. Before we co on, let me ask you this one question.

When you worked on the tug Ocean Prince for Red Star rather than Spentonbush, were you paid by Red Star or by Spentonbush?

A By Red Star.

Q I think we ended yesterday, Captain, that you had gone below after Mate Reimer took over the watch.

A That's right.

Q What did you do below, sir?

A I went to bed.

Q Were you in your quarters, room or cabin?

A In my quarters, yes.

Q Could you tell us what happened next, as best you can recall it?

A Well, sir, I went to sleep and I got awakened with a bump. I just laid there because I assumed that it was ice.

A few minutes after that the deckhand came in and called me and said that Mr. Reimer wanted me.

I jumped up and went up to the pilothouse. Mr. Reimer was standing there on the starboard side of the pilothouse and he said that he had hit something and that he couldn't find that buoy. He assumed it was under the ice.

MR. SCHULMEISTERS: I object and I move to strike what Reimer said, that he assumed it was under ice. That's hearsay.

MR. LOSQUADRO: Your Honor, Captain Reimer's testimony is already on the record. Mr. Schulmeisters has had an opportunity to examine him.

MR. SCHULMEISTERS: That's got nothing to do with this witness' testimony.

THE COURT: It's unimportant in that Reimer's deposition says the same thing. It comes in through Reimer. This really confirms that Reimer said it at the time. It obviously is not acceptable for the truth of it.

MR. SCHULMEISTERS: That's right, that too, For that purpose, I object to it.

BY MR. LOSQUADRO:

Q Could you tell me, or do you recall, what the tug's engine was doing when you arrived in the pilothouse?

A The engine was still running, but the wheel was disengaged, the wheel was not turning.

Q Do you mean the propeller?

A The propeller, right.

Q If I may lead you for a moment, did he disengage the clutch?

A That is correct.

Q Was the tug and barge dead in the water or did it have headway or sternway?

MR. BESHLIAN: We went through this yesterday about leading questions. I think we are getting into an area where Mr. Losquadroo should place the question and let the captain answer --

THE COURT: Mr. Losquadro, you don't have to, in your question, put forth all the possible answers and let him pick one. Just ask him the questions and let him make his selections.

Q Was there any movement on the tug and barge when you arrived in the pilothouse?

A Yes, sir.

Q Would you describe the movement?

A The barge was drifting through the water. She did have some headway.

THE COURT: Was the headway apparent headway through the water or was it actual headway over the bottom, could you tell?

THE WITNESS: It was headway through the water and over the bottom.

THE COURT: How much time had elapsed between the bump and your arriving at the bridge?

THE WITNESS: I'd say less than five minutes.

Q Could you be more precise than that, sir?

A Well, sir, when I first felt the bump I assumed he had run into some drift ice. I just laid there, I didn't get up. Then the deckhand came down and he called me. It could be less, it could be two minutes because I ran right up in my underclothes. I didn't bother putting any clothes on, just my shoes.

THE COURT: Less than five minutes, more than one minute, somewhere between one and five minutes?

THE WITNESS: Yes, sir.

Q Where were your quarters where you were sleeping in relation to the pilothouse?

A Right behind the pilothouse.

Q What did you do next, sir?

A When I came in the pilothouse Mr. Reimer said that he had hit something, he couldn't find the buoy. I looked around to see where we was and try to get an idea which way we were headed and where we was.

When I finally got awake, I threw the searchlight around. First I looked on the radar to see if I could find the buoy, but it wasn't picking it up. I looked all around the port side, right where the buoy should be, with the searchlight.

THE COURT: Does that buoy have a radar reflector on it?

THE WITNESS: No, sir, it doesn't. When I threw the searchlight around on the starboard side I found the can buoy just about in line with the pilothouse of the tug.

Q Can you estimate how far off the starboard side the buoy was when you sighted it?

A I would say about 50 or 75 feet.

Q Are you familiar with that buoy, sir?

A Yes, sir.

Q Are you familiar with the obstruction it marks?

A Yes, sir.

Q Were you able to make a determination where your unit was in relation to the rock?

A It was hard to say where we were in relation to the buoy because I had assumed that the buoy was off position.

Q Assuming it was on station and in position, could you make an estimate or did you make an estimate as to where the tug was in relation to the rock?

MR. BESHLIAN: Your Honor, I think the gentleman has answered the question that he couldn't because he assumed he was off station.

THE COURT: He is now saying assuming it was on station, if it was on station where were you?

THE WITNESS: I figure we were between the rock and the buoy.

THE COURT: How far off the rock does the buoy sit when it is on station?

THE WITNESS: I really don't know, sir.

Q At this time did you look for and did you see Con Hook Island light?

A Yes, sir, I saw Con Hook light, yes.

Q Where was it when you looked at it?

A It was right over between the port corner and the midship light on the barge.

MR.BESHLIAN: Would you repeat that, please?

THE WITENSS:Right between the port corner of the barge and midship light.

THE COURT: What was there again, now I am puzzled?

THE WITNESS: He wasn't heading directly on it. The light was between the middle and the port corner of the barge, about halfway.

THE COURT: This is the Con Hook light we are talking about?

THE WITNESS: Yes, sir, yes.

THE COURT: So that he was steering a point or two to the east of the Con Hook Light?

MR. LOSQUADRO: We don't know that, your Honor. We know that was his heading at the moment he looked.

THE COURT: The heading, all right.

Q At any time between when you first felt the bump when you were in your cabin and this moment, did you feel any hard sounds on the hull of either vessel, or did you hear any noises indicating touching something?

A No, sir.

Q Did you see any oil in the river?

A Yes, sir.

Q What did you see and where did you see it?

A I saw some oil drifting by as we were passing forward on the port side.

Q Could you tell us what happened next?

A Well, sir, I come up, after I seen what was happening, seen where we were heading. I didn't know just where we were, so I figured I'd just see if we were still afloat, so I gave it a little shot ahead and stopped and she drifted. A few more minutes later I gave her another shot ahead to see if we were still floating, and we were.

Q You were or you weren't?

A We were. I figured when I got far enough when I was by that shoal I'd come around hard right, dead slow.

THE COURT: You know, you haven't told us how it happens that you are at the Con at this moment. You went up on the deck, Reimer was navigating, now you've got yourself navigating. How did that occur?

THE WITNESS: Well, sir, when I got on the bridge, I got in the pilothouse, this man was very upset. He was just standing there, so I took over.

THE COURT: Did you have any conversation before you took over?

THE WITNESS: Other than him looking for the buoy, no, sir.

Q Did you navigate out of that area of the buoy?

A Yes, sir.

Q I believe you said you made a hard right, did I understand that correctly?

A Yes, that's right.

Q What was your intention now and where were you going?

A At this particular time I was just wondering where we were going to tie the barge up. I feel I was coming around, I would take her down to the Day Line dock south of the Bear Mountain Bridge.

Q At any time while you were up and about and while you were taking the boat out, at any time, did you feel any contact with anything hard on the barge or on the tug?

A No, sir.

Q Did you go to the Day Line pier?

A Yes, sir.

Q Was the barge tied up there?

A Yes, sir, we tied the barge up there, yes.

Q Did the Ocean Prince remain in the notch?

A Yes, sir.

Q What happened next, sir?

A Well, sir, after we got secured there Mr. Reimer, he made all the arrangements for calling the Coast Guard and I went back to bed.

Q Did anyone subsequently come to the area?

A Yes, sir, the Coast Guard came on the scene.

THE COURT: When?

THE WITNESS: Some time during that watch, sir, some time between, say, 2 and 6, I am not sure of the times.

THE COURT: At night time?

THE WITNESS: Yes, sir.

Q Were they there when you came on watch?

A Yes, sir.

Q That wouldbe 6 in the morning?

A 6, sir.

Q Who came?

A Two young men, I don't know their names.

Q Did you have conversations with them?

A Yes, sir.

Q Can you describe the substance of those conversations?

A Well, we just talked about the incident and the area and I told him it was a bad area and they agree with me.

I said, "You fellows should know, you had one there," and they say yes, they had three.

MR. SCHULMEISTERS: I object, your Honor. They cannot make an admission for the government.

THE COURT: Let's try to identify these "young men" better. Were they officers or enlisted men, sir?

THE WITNESS: Enlisted men, sir.

MR. LOSQUADRO: I think that constitutes a declaration against evidence, and I think it is a -- second of all, those men are within the Coast Guard's power and third of all, you are going to hear evidence today of those other incidents.

THE COURT: Well, if I am going to hear other evidence about it, there is no need to take the hearsay of a couple of enlisted men.

MR. LOSQUADRO: I still think its' hearway with an exception.

THE COURT: Let's take a look at what it says with respect to persons who can make admissions against interest. It would have to be a statement by a person authorized to make it, or a statement by a gentleman or servant concerning a matter within the scope of his agency made during the existence of the relationship. I don't think enlisted men's statements qualify under either of those.

MR. LOSQUADRO: I certainly think they would fit within the description of servant.

THE COURT: They are servants, but I don't think navigating around that particular rock has been shown to be their responsibility.

MR. LOSQUADRO: Your Honor, there is an additional point. If the facts are notorious within the ranks of the Coast Guard, I think it might be admissibel on those grounds.

MR. SCHULMEISTERS: I object, your Honor. I don't think there is anything that facts are notorious within the Coast Guard. This is absolutely inflammatory language on Mr. Losquadro's part used in his brief and a few times during the trial. I object to it.

THE COURT: I will sustain the objection.

Q Captain, there was evidence yesterday concerning an incident involving the barge George T. Tilton and the tugboat Bart Turecamo. It was admitted in evidence, Coast Guard records, on which the name of the person in charge of that tug was identified as Mr. Vogel.

Do you know or did you know Mr. Vogel?

A I knew of him, I didn't know him personally.

Q Did you know him as having spent a lot of time on the Hudson?

MR. SCHULMEISTERS: He just said he didn't know him personally. How can he testify to that?

MR. LOSQUADRO: We might get into how he knows him.

THE COURT: Yes, I will allow it.

Q Do you know him as a man who has spent a lot of time on the Hudson River?

A Yes, sir, he was the captain on Bart Turecamo.

Q Do you know if that tug frequented those waters?

A Yes, it did.

THE COURT: Incidentally, that particular report seems to be missing. I think I know the reason why. I think I gave it back to somebody yesterday to make copies of it. It was to have been returned and it hasn't been.

MR. SCHULMEISTERS: Some of the exhibits I have over here.

Q Did you know Captain Vogel as a man who had spent a lot of time on the river?

MR. SCHULMEISTERS: Objection, your Honor.

THE COURT: You already had that answered, that he was the master of the Turecamo, and that the Turecamo went up and down the river regularly here, so Vogel knew the waters.

MR. LOSQUADRO: It occurred to me later that I had preceded the last question with that one.

Q Captain Kiernan, could you please describe the weather conditions as you observed them when you came onto the pilothouse after feeling the bump?

A It was overcast and snow flurries.

Q Could you give an estimate of visibility?

A I'd say a couple of miles, approximately.

Q Captain, would you explain your experience on the Hudson River, please?

A I don't understand the question.

Q I would like to get your history of navigation on the Hudson River, if any. Could you explain that?

A We run that river quite often.

Q Do you mean you when you say "we"?

A Myself, yes, sir.

Q Was that prior to 1972, sir?

A Yes, sir.

Q Had you run it during your entire career?

A Yes.

Q Can you give an estimate, sir, on the number of times a week or a month or a year you would transit it, a round trip transit?

A Once a week.

THE COURT: For how many years?

THE WITNESS: 33 years, 30, 35 years, yes. We had some charts.

THE COURT: If you want someone that supposedly came off the vessel, that's Exhibit 4 and it is right here.

MR. LOSQUADRO: As long as it is in evidence, I think we should just work with something in evidence.

Q Captain, I am going to lay this in front of you. This has been already identified as a chart taken off the Ocean Prince some time subsequent to the incident.

Captain, I would like you to explain to the Court your practice and procedure in navigating northbound from the Bear Mountain Bridge towards the area that we are talking about today.

MR. SCHULMEISTERS: May we come and look, your Honor?

THE COURT: Yes, come up and look at it by the witness.

Q Would you like a parallel ruler?

MR. SCHULMEISTERS: Objection. Why doesn't the witness first say what he needs. This is leading again. I object to this type of question.

MR. LOSQUADRO: It was quite innocent.

Q Captain, could you epxlain your practice and procedure in navigating northbound?

THE COURT: Let's confine ourselves to navigating during the winter when there is ice on the river. I assume the existence of ice on the river and ice build-ups has an effect on how you would navigate, particularly if it's night time with limited visibility.

A I would try to do the same thing in the daylight as I would at night. Usually, when I come around here, I come through the Bear Mountain Bridge northbound. I continue north until I passed Fort Montgomery. Then I kind of bring my unit around and I head up on Sugarloaf Hill.

Q Would you point to that, please?

A Right here.

THE COURT: Sugarloaf Hill shows as being on the easterly bank of the Hudson south of Garrison.

MR. LOSQUADRO: And generally north of Con Hook Island.

THE COURT: Slightly north of Con Hook which is on the opposte shore.

Suppose you can't see Sugarloaf Hill.

BY THE COURT:

Q If you can't see Sugarloaf, what do you steer on?

A Well, in the night if you take your binoculars you can see the outline of the mountain, but if it is hazy or foggy, I have to use radar. So, you would keep the unit in the center of the river and then when we get up about abeam of Mystery Point, then I kind of let my unit drop over to the east and I follow this shore around, making sure to give this area a big berth. I just follow it up until I get by -- once I get by Con Hook Light, I go right up.

Q Given the weather conditions that night when you came up to the pilothouse again that is dark, overcast and, I believe you said, flurries, do you think that Sugarloaf Hill would have come into view while proceeding through this area, and I am running my hand over an area approaching Mystery Point from the south?

A No, sir.

Q That rock constitutes a hazard to navigation, does it not?

It takes up about a third of the channel?

A Yes, sir.

MS. SCHULMEISTERS: With all due respect, your Honor, I must note an objectionto that.

Q When you navigate that during the winter, when there is ice, does the ice tend to build up on the east shore north of Mystery Point when the tide is ebbing?

A Yes, sir, it does.

Q Doesn't it make it difficult to tell when you become abeam of Mystery Point?

A Yes, sir, it does, yes.

Q Have you had occasions,in the number of times that you have traversed that area during the winter months, of being unable to pick up the buoy because of ice accumulations?

A Yes, sir.

Q How oftenwould you say it occurs per winter?

A Whenever there is any ice the buoy is usually under the ice.

Q Completely under or just partly covered?

A What happens when you have an ice flow, it will flow over the buoy and the buoy would go under the ice.

Q Completely obscuring it?

A Yes, sir. As the ice passes over it it will come back up.

Q In other words, it tends to bob a bit, sometimes it shows and sometimes it doesn't?

A Yes, sir.

Q Did you have any discussion with Mr. Reimer about this particular situation, that Buoy 25?

A No, sir.

Q Were you aware that he had never navigated up this river?

A No, sir.

MR. LOSQUADRO: He had been up there, your Honor, he had --

MR. BESHLIAN: The question was "navigated".

Q Had you been at the helm at 1:30 a.m. on the morning of February 3rd with the conditions as they were, would you have stationed a lookout and, if so, where?

A I would have stationed him on the bow of the barge.

THE COURT: All right, continue.

BY MR. LOSQUADRO:

Q Captain, you testified the visibility was about two miles. In proceeding through that area, do you normally put your deckhand on the bow of the barge with two miles visibility in that area?

MR. BESHLIAN: Your Honor, the question was asked and answered.

THE COURT: I think it was particularly because we are leaving out the fact that the navigator has been unable to locate the buoy.

MR. LOSQUADRO: That happens when you get into the area. Your Honor, I think it is a fair question whether it's his practice with two miles visibility to put a lookout on the bow of the barge.

THE COURT: With two miles visibility, light snows --

MR. LOSQUADRO: Flurries, your Honor.

THE COURT: And fairly heavy ice and no sign of the buoy when it should have been visible. Would you have put a lookout on the barge if you had been at the helm?

THE WITNESS: Two miles visibility I wouldn't put the man on the barge, no, sir.

MR. LOSQUADRO: Those additional factors

are already in evidence, your Honor. The barge was loaded and he already testified that he had no difficulty seeing over it.

Q That is not your practice? You can't speak for others in particular?

A That is correct, yes.

THE COURT: Of course, as I understand it, when you navigate that area and when you reach the point where the Buoy 25 which, at that time, on that chart, was listed as Buoy 21, was located, you made it a practice to keep well to the easterly side of the river?

THE WITNESS: Yes, sir.

MR. LOSQUADRO: There are different locations, as I recall his testimony. I think he heads from Fort Montgomery which is on the other side.

MR. SCHULMEISTERS: Objection. He didn't testify he heads from Fort Montgomery.

THE COURT: Who has the chart, incidentally?

MR. LOSQUADRO: I am sorry, I stand corrected, you are quite right, Mr. Schulmeisters he didn't say he headed from Fort Mongery, it was Sugarloaf.

THE COURT: If you head for Sugarloaf from mid-channel at Fort Montgomery, you wouldbe well to the easterly side of the channel by the time you reach that buoy, correct?

THE WITNESS: Yes.

THE COURT: Suppose you, for one reason or another, were not to the easterly side but were, you thought, mid channel, and by "mid channel" I am not taking into account the fact that a part of the channel was taken away by that rock; would you have proceeded forward without having a lookout on the front of the barge?

THE WITNESS: If the visibility was two miles, I would have him out on the pilothouse, I wouldn't have him out on the barge.

THE COURT: Would you keep him out on lookout or let him go for coffee under those circumstances?

THE WITNESS: I would keep him on lookout.

MR. LOSQUADRO: I think I am dong, your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. BESHLIAN:

Q Captain Kiernan, you testified yesterday that at the time in 1974 y9u were usually employed by Spentonbush Fuel Transfer Corporation, is that correct, sir?

A Yes, sir.

Q Are you still employed by the same company?

A Yes.

Q Did you, from time to time, get transferred from Spentonbush to Red STar's employ to fill in on one of their tugs?

THE COURT: He testified yesterday that he only did it once, am I correct?

THE WITNESS: Yes, s[illegible]

Q Have you done it at all since the 1974 incident?

A No, sir.

Q So that the incident of February -- the transfer of February 1 through February 4 of 1974 was the only time that you worked for Red Star on one of their tugs?

A Yes, sir.

Q Do you recall who assigned you to the Red Star tug?

A It was a night dispatcher from Red Star, I don't know his name.

Q When he assigned you, did he discuss your experience with respect to tugboats?

A No, sir.

Q Did he tell you where your vessel would be operating?

A No, sir.

Q Did he tell you that Mr. Reimer would be coming aboard the vessel?

A No, sir.

Q When for the first time did you learn that Mr. Reimer would be working with you aboard the Ocean Prince?

A I didn't know he was going to come on until he was there.

Q This would have been on the afternoon of February 2nd?

A Yes, sir.

Q When he came aboard, did you have any conversation with Mr. Reimer?

A No, sir.

Q When you on watch when he came aboard, sir?

A No, sir.

Q Do you recall where you were at the time?

A Bushey Shipyard in Brooklyn.

Q Tied up alongside the pier?

A Yes, sir.

Q Did you say anything or did you see Mr. Reimer when he came aboard in the afternoon?

A No, sir.

Q When was the first time that you saw Mr. Reimer on board the tug?

A When I came on watch in the evening.

Q When was that, about 6 o'clock?

A About 1800, yes, sir.

Q Was this still at the Bushey Yard?

A Yes, sir, I believe it was.

Q At that time, did you receive the instructions to go to Bayonne to pick up the Barge New London?

A Yes, sir.

Q Did you discuss the job at all at that time with Mr. Reimer?

A No, sir.

Q When you got to Bayonne, you made up to the barge, is that correct, and you stated yesterday that Mr. Reimer assisted the deckhands in this make-up?

A Yes.

Q You left Bayonne and you headed up river as soon as the tow was made up properly?

A Yes, sir.

Q And you were on watch?

A Yes.

Q And you continued on watch up until Haverstraw Bay?

A Yes.

Q During that period of time, did you have any conversation with Mr. Reimer?

A No, sir.

Q Do you know where he was; aboard the vessel?

A I believe he was in his room.

Q Where was his room located?

A His room is in back of the pilothouse

Q When he came on watch, did you call him or did he come out on his own?

A The deckhands called him.

Q About what time was that, sir?

A 2330.

Q He shortly thereafter came out into the wheelhouse, am I correct?

A Yes, sir.

Q And then he relieved you?

A Right, sir.

Q When he came into the wheelhouse, did you at that time have any discussion with respect to the conditions that Mr. Reimer could expect to meet in the river?

A No, sir.

Q Did you know anything of Mr. Reimer's experience in the river?

A No, sir.

THE COURT: Were you of the impression that he had navigated the Hudson before?

THE WITNESS: Yes, sir.

Q What gave you this impression, Mr. Kiernan?

A Because the boat runned the river and I assumed, being that he was the captain of it --

Q Do you know when the boat has run the river?

A No, sir; no.

Q Do you know anything of the operations of the Ocean Prince as to where she had been used and where she had been operating?

A She had been operating around the harbor.

Q Do you know for how long a period of time?

A No, sir; no.

Q Did you know how long Mr. Reimer had been off the boat?

A No, sir.

Q Did you inquire when he left the boat?

A No, sir.

Q So that your total assumption of his ability to navigate the Hudson is based on the fact that the tug had been used in the area for some time?

A Yes, sir.